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MT LEGISLATIVE HISTORY

Chapter 709 1989

Bill H _____ (S) 385 Original bill & hist. ✓ C

H. Committee on Natural Resources

Hearing Date(s) Mar 08 ✓ C
Mar 10 ✓ C
_____ ___ C
_____ ___ C

Date Out Mar 11 ✓ C

S. Committee on Judiciary

Hearing Date(s) Feb 14 ✓ C
Feb 15 ✓ C
_____ ___ C
_____ ___ C

Date Out Feb 16 ✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

Note: A Free Conference Committee was appointed to address SB 385 L1989, but the committee's minutes are unavailable.

SENATE BILL NO. 385

INTRODUCED BY HARP, D. BROWN

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

FEBRUARY 10, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 16, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 11, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 15, 1989	PASSED CONSIDERATION FOR THE DAY.
MARCH 16, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 20, 1989	THIRD READING, CONCURRED IN. AYES, 94; NOES, 3.

	RETURNED TO SENATE WITH AMENDMENTS.
	IN THE SENATE
	RECEIVED FROM HOUSE.
APRIL 11, 1989	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 12, 1989	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE HOUSE
APRIL 13, 1989	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 14, 1989	FREE CONFERENCE COMMITTEE REPORTED.
APRIL 15, 1989	SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
APRIL 18, 1989	THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE HOUSE
APRIL 18, 1989	FREE CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE SENATE
APRIL 19, 1989	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 385

INTRODUCED BY HAPP Dave Brown

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REMEDIAL ACTION UPON THE RELEASE OF A HAZARDOUS SUBSTANCE TO INCLUDE CERTAIN PROVISIONS PARALLEL TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (FEDERAL SUPERFUND); REDEFINING "HAZARDOUS OR DELETERIOUS SUBSTANCE"; ADDING LIMITED IMMUNITY FOR REMEDIAL ACTION CONTRACTORS; AUGMENTING INVESTIGATIVE AND ENFORCEMENT AUTHORITY; PROVIDING FOR PUBLIC NOTICE AND COMMENT ON ADMINISTRATIVE ORDERS AND CONSENT DECREES; CLARIFYING AND ADDING DEFENSES TO LIABILITY; GRANTING CONDEMNATION AUTHORITY FOR CONTAMINATED SITES; AMENDING SECTIONS 75-10-701, 75-10-704, 75-10-711, 75-10-712, AND 75-10-715, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING RETROACTIVE APPLICABILITY TO CERTAIN REMEDIAL ACTION COSTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. This part may be cited as the "Comprehensive Environmental Cleanup and Responsibility Act".

LC 0854/01

Section 2. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(3) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

~~(2)~~(4) "Fund" means the environmental quality protection fund established in 75-10-704.

~~(3)~~(5) "Hazardous or deleterious substance" means a

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substance that poses because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health ~~and that is either a petroleum product or listed as a hazardous substance in volume 50, Federal Register, pages 13474 through 13513,~~, safety, or welfare or the environment, including:

(a) all substances that are defined as hazardous substances by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) all substances identified by the administrator of the United States environmental protection agency as hazardous substances pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) all substances that are defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including all substances listed or identified in 40 CFR 261; and

(d) any petroleum product.

(6) "Natural resources" includes but is not limited to land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resource within the state or owned, managed, held in trust or

otherwise controlled by or pertaining to the state of Montana or a political subdivision of the state.

(7) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility.

(8) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(9) "Petroleum product" includes gasoline, crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or

fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

~~(4)~~(10) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance either directly into the environment or in a manner in which the substance can reasonably be expected to enter the environment if not contained, removed, or abated, but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

~~(5)~~(11) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, abatement, removal, replacement, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(12) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially responsible party acting pursuant to an order or request issued by the

department, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(13) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (13)(a) to provide services relating to a remedial action.

(14) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 3. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may only be used to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a

release of hazardous or deleterious substances. ~~Fund uses must include the conduct of the hazardous waste site remedial action program, which is a program of remedial action at sites:~~

~~(a) where a release has occurred; and~~

~~(b) where the U.S. environmental protection agency has, under the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, conducted a hazard ranking study and judged the site not eligible for inclusion on the national priority list or where the U.S. environmental protection agency has no authority or no plan to assess the site under CERCLA.~~

(3) ~~The department's program for remedial action under subsection (2) must include~~ To maintain an adequate revolving fund, the department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) ~~investigation~~ investigate, ~~negotiation~~ negotiate, and take legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, damages, and ~~department expenditures~~ remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to [section 8] and all civil penalties assessed pursuant to 75-10-711(5);

~~(b)~~(c) funds appropriated to the fund by the legislature; and

~~(c)~~(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101."

NEW SECTION. **Section 4. Information gathering and access.** (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request,

any information or documents relating to but not limited to the following matters:

(a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is being generated, treated, stored, or disposed of at or transported from a facility;

(b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at or from a facility;

(c) information relating to the ability of a person to pay for or to perform a cleanup; and

(d) any other information relevant to the department's determination of the appropriate remedial action to be taken or to the enforcement of this part.

(3) For purposes of assisting the department in acquiring information relevant to the need for, the determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any duly authorized officer, employee, or representative of the department is authorized to:

(a) enter or have access at reasonable times to any facility or other place or property where:

(i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of, or transported from;

(ii) there has been or may be a release of a hazardous or deleterious substance;

(iii) records or other relevant information regarding a release or threatened release is located;

(iv) entry is necessary to determine the need for any appropriate remedial action; or

(v) entry is necessary to effectuate a remedial action under this part; and

(b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a) or from any location where a suspected hazardous or deleterious substance may be located. Any officer, employee, or representative of the department is authorized to inspect and obtain samples of containers or labeling for suspected hazardous or deleterious substances. If the officer, employee, or representative obtains samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample.

(4) The department may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with the information-gathering authority conferred pursuant to this section. The method for service of subpoenas and payment of

witness fees and mileage is the same as that required in civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a person pursuant to this subsection, the district court for a district in which the person is found, resides, or transacts business, upon application of the department and after notice to the person, has jurisdiction to issue an order requiring the person to appear and either give testimony or produce documents, or both, before a hearing officer. A failure to obey the order of the court may be punished by the court as a contempt.

(5) If consent is not granted regarding a request made by an officer, employee, or representative under this section, the director of the department may issue an order directing compliance with the request.

(6) The department may commence a civil action to compel compliance with an order issued pursuant to this section.

(7) In any action commenced pursuant to subsection (6), the court shall enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with law.

(8) Persons subject to the requirements of this

section may make a written claim of confidentiality for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials at the time they are obtained by the department. If the department accepts the characterization, it shall maintain that information as confidential. Information describing physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

Section 5. Section 75-10-711, MCA, is amended to read:

"**75-10-711. Remedial action** -- orders -- penalties -- judicial proceedings. (1) The department may take remedial action ~~necessary--and--appropriate--to--protect--the--public health,--public--welfare,--or--the--environment~~ whenever ~~it determines that~~:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health,

welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously ~~by the owner or operator of the vessel, vehicle, or facility from which the release emanates or by any other responsible party~~ by any person liable under 75-10-715(1).

(2) Whenever the department ~~is authorized to act pursuant to subsection (1) or~~ has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by [section 4] that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, ~~public~~ safety, or welfare, or the environment. The department is authorized to draw upon the fund to take the remedial action.

(3) Any person ~~responsible for the release~~ liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund ~~in order~~ to take action under ~~subsections~~ subsection (1) ~~and (2)~~ if it has made diligent good faith efforts to determine the identity of the ~~party~~ person or ~~parties~~

~~responsible~~ persons liable for the release or threatened release and:

(a) is unable to determine the identity of the ~~responsible party~~ liable person or ~~parties~~ persons in a manner consistent with the need to take timely remedial action; or

(b) the ~~party~~ person or ~~parties~~ persons determined by the department to be ~~responsible for the release or threatened release~~ liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take ~~such~~ action in a timely manner; and

~~(4) The~~ (c) the written notice to ~~a responsible party must inform the responsible party~~ each person informs him that if ~~that party~~ he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the ~~costs of the~~ state's remedial action ~~taken by the department~~ costs and may be subject to ~~punitive damages~~ penalties pursuant to 75-10-715(3).

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or

appropriate to protect public health, safety, or welfare or the environment.

(5) A person who violates or fails or refuses to comply with an order issued under [section 4] or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under [section 4] or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under [section 4] or this section; or

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under [section 4] or this section.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to

issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release."

Section 6. Section 75-10-712, MCA, is amended to read:

"**75-10-712. Emergency action.** If the department determines that immediate response to an imminent threat to public health, ~~public~~ safety, or welfare~~,~~ or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to 75-10-711(1) ~~and--(2)~~ without the prior written notice required by 75-10-711(3)~~(b)~~. ~~In such a case,~~ ~~the~~ The department ~~must~~ shall give subsequent written notice to the ~~responsible party~~ person liable under 75-10-715(1) within 5 days after the action is taken, describing the circumstances which required the action to be taken without prior notice."

NEW SECTION. **Section 7.** **Liability of remedial action contractor.** (1) A person who is a remedial action contractor

with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.

(2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(3) This section does not affect the liability of a person under a warranty under federal, state, or common law or the liability to an employee of an employer who is a remedial action contractor under any provision of law, including any provision of a law relating to workers' compensation.

(4) A state agency, state employee, or an employee of a political subdivision who provides services relating to remedial action while acting within the scope of its or his authority as a governmental agency or employee has the same exemption from liability as is provided to the remedial action contractor under this section.

(5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1) with respect to remedial action costs or damages caused by an act or omission of a remedial action contractor.

(6) Except as provided in subsections (4) and (5), this section does not affect the liability under this part of a person other than a remedial action contractor.

(7) This section does not affect the plaintiff's burden of establishing liability under this part.

(8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially responsible party under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

NEW SECTION. **Section 8. Administrative penalties.** (1) In lieu of proceeding under 75-10-711(5), the department may assess penalties of not more than $1,000 per day per violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to [section 4(5)].

(2) In determining the amount of any penalty assessed

pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The notice and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6.

(4) A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as provided for in Title 2, chapter 4, part 7.

(5) Administrative penalties payable under this section must be deposited in the environmental quality protection fund established in 75-10-704.

Section 9. Section 75-10-715, MCA, is amended to read:

"75-10-715. ~~Reimbursement~~ Liability -- reimbursement and penalties -- proceedings -- defenses. (1) ~~Subject~~ Notwithstanding any other provision of law and subject only to the defenses set forth in subsection ~~(4)~~ (5), ~~a party responsible for a release is liable for~~ the following

persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all ~~costs of~~ remedial action ~~taken~~ costs incurred by the ~~department pursuant to this part~~ state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs

of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit, approval, or license and the project or facility was being operated within the terms of its permit, approval, or license.

~~(2)~~(3) If the ~~responsible-party~~ person liable under 75-10-715(1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3)~~(b)~~, the ~~responsible party~~ person may be liable for ~~punitive damages~~ penalties in an amount not to exceed two times the amount of any costs incurred by the ~~department~~ state pursuant to this section.

~~(3)~~(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1) ~~and~~ ~~(2)~~ through (3). Proceedings to recover costs and penalties must be conducted in accordance with [section 13]. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the

~~responsible-party~~ person liable under 75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.

~~(4)~~(5) No ~~party~~ person is liable under ~~subsection~~ subsections (1) ~~or~~ ~~(2)~~ through (3) if that ~~party~~ person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required; or

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the ~~party~~ person had any ownership, authority, or control and was not caused by any action or omission of the ~~party~~ person; or

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that he:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or

deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued or an approval granted by the department, the hazardous or deleterious substance was specifically identified in the permit or approval, and the release was within the limits allowed in the permit or approval;

~~(c)~~(f) in the case of assessment of ~~punitive--damages~~ penalties under subsection (3), that factors beyond the control of the ~~responsible-party~~ person prevented the ~~party~~ person from taking timely remedial action~~.~~; or

(g) the person accepted only household refuse (garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to a solid waste disposal facility, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the

term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that he has satisfied the requirements of subsections (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to

know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Nothing in subsections (5)(b) and (5)(c) or in this subsection (6) may diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the

property to another person without disclosing the knowledge, the previous owner is liable under subsections (1) through (3) and no defense under subsection (5)(b) or (5)(c) is available to that person.

(e) Nothing is this subsection (6) affects the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility."

NEW SECTION. **Section 10.** **Settlement -- bar to contribution liability.** (1) A person who has resolved his liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved his liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other

person who has not resolved his liability.

(3) A person who has resolved, in whole or in part, his liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

NEW SECTION. **Section 11.** **Condemnation -- creation of state lien.** (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts 1 through 3.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is

duly filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an action against a person to recover all costs, penalties, and natural resource damages for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

NEW SECTION. **Section 12.** **Degree of cleanup required -- permit exemption.** (1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable

state or federal environmental requirements, criteria, or limitations;

(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment and that:

(i) use permanent solutions;

(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(iii) are cost-effective, taking into account the total short- and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.

(3) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection (1) and this part.

NEW SECTION. **Section 13.** **Payment of state costs and penalties.** (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department shall require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses. The department's certification of the state's remedial action costs is prima facie evidence that the costs are reasonable and are consistent with this part.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical on-site construction of the remedial action.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.

NEW SECTION. **Section 14.** Public notice of administrative order or consent decree. (1) Except as provided in 75-10-712, before approval of any administrative order or consent decree issued pursuant to this part, the department shall:

(a) publish a notice and brief description of the proposed order or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

(b) provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed order or decree and, upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person), conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed order or decree; and

(c) consider written or verbal comments properly submitted during the comment period or at the public meeting.

(2) Upon making a final decision regarding the proposed order or decree, the department shall publish notice, as provided under subsection (1), and make copies of the approved order or decree available to the public.

NEW SECTION. **Section 15.** Agreements to perform

remedial action. (1) To expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever practicable and in the public interest, may enter into an agreement with any person, including the owner or operator of the facility from which a release emanates, to perform a remedial action if the department determines that the action will be properly done by the person. The agreement must contain terms and conditions that the department in its discretion determines to be appropriate.

(2) Whenever the department enters into an agreement under this section for remedial action or for assessment or payment of natural resource damages, the agreement must be filed in an appropriate district court as a consent decree and must be available for public comment for at least 30 days.

(3) A decision of the department to enter into or not enter into agreements under this section is not subject to judicial review.

NEW SECTION. **Section 16.** Liability apportionment and contribution. (1) Any person held jointly and severally liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties as provided in this section. The burden is on each liable person to show how his liability should be apportioned. In apportioning the liability of any person under this section,

the trier of fact shall consider the following:

(a) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;

(b) the amount of hazardous or deleterious substance involved;

(c) the degree of toxicity of the hazardous or deleterious substance involved;

(d) the degree of involvement of and care exercised by the person in manufacturing, treating, transporting, and disposing of the hazardous or deleterious substance;

(e) the degree of cooperation by the person with federal, state, or local officials to prevent any harm to the public health, safety, or welfare or the environment; and

(f) knowledge by the person of the hazardous nature of the substance.

(2) If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate share of the aggregate liability, the person has the right of contribution from any other liable person. If for any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the

noncontributing person's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing person.

NEW SECTION. **Section 17. Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 18. Codification instruction.** [Sections 1, 4, 7, 8, and 10 through 16] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 1, 4, 7, 8, and 10 through 16].

NEW SECTION. **Section 19. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 20. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 21. Retroactive applicability.** [Section 9] applies retroactively, within the meaning of 1-2-109, to all remedial action costs incurred before [the

effective date of this act].

NEW SECTION. **Section 22. Effective date.** [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 14, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, Vice Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail.

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 385

Presentation and Opening Statement by Sponsor: Senator Harp opened the hearing. He said the bill was to put Montana statute in compliance with the federal act and make Montana a lead agency in qualifying for the federal superfund. The federal government has recognized the dangers of hazardous waste and established a fund to help in the cleanup of the sites. The EPA has given $8 million to the state to use for remedial activities at a few state sites, of which $7 million went to in-state contractors to the present time. If Montana doesn't start to take control of this act, it will never get access to the larger share of superfund money, he said. The EPA has requirements the state must meet. Montana has the ability to save time and money while cleaning up the sites. Both public and private sector can benefit, he told the committee. Mining areas need astronomical cleanup and the cost can be lower if Montana qualifies. He said that over 140 sites that need cleanup have been identified. Montana is not getting the job done because direction has not been provided. The bill will expand existing authority -- information gathering authority, administrative order authority. It also establishes a standard of review, protects contractors involved i.e. liability.

It allows for penalties, recovery of costs incurred by the state and other mechanisms, he told the committee.

List of Testifying Proponents and What Group they Represent:

Representative Dave Brown, Butte
John Fitzpatrick, Pegasus Gold
Tom Mayer, Attorney General's Office
Howard Guy, Flathead County Commissioner
Chris Kauffman, E. I. C.
Doug Parker, Hydrometrics
Don Peoples, Chief Executive, Butte-Silver Bow
Gordon Huddleston, Multi-Tech Service Division at MSC
Jane Ellis, Montana Audubon
Bob Dozier, Northern Plains Resource Council
Leo Berry, Burlington Northern
Stan Bradshaw, Trout Unlimited
Bob Lane, Legal Counsel for Fish, Wildlife and Parks
Kim Wilson, Montana Chapter of the Sierra Club

List of Testifying Opponents and What Group They Represent:

None

Neutral Comments: Allyn Joslin for Ward Shanahan (ARCO)

Testimony: Representative Dave Brown of Butte testified as co-sponsor. Basically, this bill provides Montana with authority similar to federal EPA authority, so that Montana can stand on its own two feet in cleanup of the superfund area, he said. He felt the bill was critical for Montana industry, rather than using the federal EPA connection. Federal employees said that 8 years of cleanup in the Gold Creek area near Missoula and $22 million are just the beginning in expenditure in that site. Montana is not going to be able to carry that kind of burden, he said, but can have the tools to get people to clean up the sites through this bill, he commented. We have a lot better working relationship at the state level, he said, than having the EPA do the job. There are many sites needing cleanup and the state needs the tools provided by the bill.

John Fitzpatrick said that, in the mining business, it was very difficult to avoid the superfund issue at some point. Even companies that endeavor to operate within the guidelines in existence today, encounter superfund if they go out of state or acquire properties, he said. He felt the bill would help industry and the state work together to solve issues relating to these kind of sites. He asked that he be given time to consult other people in the corporation

before taking action on the bill. He supported the concept of the bill.

Tom Mayer said he was assigned to the department of Health. He distributed material and said the department had been asked by EPA to introduce the bill. (See Exhibit 1.) He said their ability to participate has been limited by the inadequacy of authorities. They have been in dialogue with EPA constantly. The bill will solve the problems brought up by EPA and bring the state to parity with the majority of states in the country. Thirty-eight other states have some sort of superfund law, he stated. The reason for the bill was to allow Montana to take advantage of the federal funds available. When EPA cleans up the sites, all of the money goes to out- of-state contractors. EPA allows states to take the authority and clean up their own sites. When that occurs, it is quicker and cheaper than federal cleanup. The department felt that they could have done a lot better with the $20 million spent at Gold Creek without any complete cleanup in the state.

Howard Guy said there was an 8-foot fence adjoining his property placed there by the EPA last year. The fence is in an area where his children played for years when it was not known that any hazardous waste problem existed. He asked for support of the bill.

Chris Kauffman appeared as a proponent. (See Exhibit 2.)

Doug Parker supported the bill for the reasons previously reiterated.

Don Peoples said the bill recognizes the state's obligation to assure that its citizens are not subjected to deleterious substances. He presented written testimony to the committee. (See Exhibit 3.)

Gordon Huddleston said his firm was a technical consulting firm in Butte, doing work for state and federal agencies. He said they have 180 full-time employees and bring over $10 million of outside revenue to the state's economy. He supported the bill because it provides a way for the state to protect its own future. It also provides utilization of resources and it provides direct opportunities for business growth in the state. He said that in the next 10 years the largest expenditure in the state of federal dollars is going to be in superfund sites, particularly in Clark Fork Basin. The bill is in the best interest of the general public and in the economy of the state, he said.

Janet Ellis said that wetlands near Flathead Lake had become contaminated by a Burlington Northern wood treating plant, as well as in other places. She urged support of the bill, saying state control would be better than federal control.

Bob Dozier appeared in support of the bill.

Leo Berry testified saying it was probably the most important bill he had seen introduced this session. It is not a simple bill and needs more review. He said he supported 95% of the bill but would like to submit some technical amendments to the bill.

Stan Bradshaw appeared to support the bill.

Bob Lane testified, saying his department had been appointed one of the trustees for the superfund. He said the Clark Fork would have been one of the state's best fisheries had it not been contaminated by mining operations. He said the public will be better represented if the bill was passed.

Kim Wilson felt there was a compelling need for Montana to address these sites and felt the bill would help.

Allyn Joslin presented Ward Shanahan's comments for ARCO, neither in support nor opposition to the bill. They contained suggested amendments, he said. (See Exhibit 4.)

Questions From Committee Members: Senator Yellowtail asked about the liability. Senator Harp said he didn't want the liability to be prohibitive to contractors, to the point of discouraging them from bidding on cleanup jobs. There would be an elimination of liability in a different portion of the bill, so that when persons occupy the land at a later date it would not be all inclusive. It was an attempt to be fair to contractors and to people presently holding the land.

An unidentified person came to the microphone to respond to the question for Senator Harp. He said that persons responsible for the contamination can be forced to pay for some of the cleanup. The state is allowed to pass on some of the cost to the responsible parties, rather than onto the taxpayers. The joint and several liability law was originally drafted to spare the taxpayers of the country. Whoever the department of health can find that was responsible for disposal of waste at a particular site can be billed, he said.

Senator Pinsoneault asked if the sites had been prioritized. The man said they had been prioritized into three groups -- high, middle and low priority.

Senator Beck asked if the laws passed last session would still apply in these circumstances and the answer was yes.

Closing by Sponsor: Senator Harp said that negotiations had been made between the EPA and the vice president of Champion International. That company had had good experiences with the EPA and had originally planned to testify, according to Senator Harp. He closed the hearing.

HEARING ON SENATE BILL 391

Presentation and Opening Statement by Sponsor: Senator Al Bishop of Billings, District 46, opened the hearing on the bill. He told the committee that an interim committee had met several times to come up with prison corrections problems and that this bill was one of the recommendations brought forth by the committee. The bill would provide staggered terms for board of pardons members.

List of Testifying Proponents and What Group they Represent:

Dave Fuller, Chairman of the Governor's Criminal Justice and Advisor Commission.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Dave Fuller said the commission had come up with 12 recommendations, this being one. He urged support of the bill.

Questions From Committee Members: None.

Closing by Sponsor: Senator Bishop closed the hearing.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 2-14-89
BILL NO. SB 385

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDI

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59(

January 13, 1989

DHES TESTIMONY ON LC 854 (SB 385)
DHES SPONSORED MINI-SUPERFUND BILL

Montanans have in common the goals of economic development and maintaining Montana's quality of life. Passage of the Montana Environmental Response Compensation and Liability Act (MERCLA) supports these goals. Hazardous materials contamination is now a widely recognized problem that threatens our quality of life, the public's health, and our future viability. Tremendous amounts of public and private resources are being expended on the problem nationwide. With greater state involvement, an increased portion of the effort, including jobs and expenditures (both public and private), will be in Montana. Should the state prefer to minimize its role in relation to the federal government, most of the resources will remain in Denver and Washington, D.C. Jobs will be exported and local control over decisions intimately affecting Montana's future will be lost.

The Montana Environmental Response, Compensation and Liability Act (MERCLA) is a comprehensive amendment of existing hazardous waste response authority. These amendments are necessary for several reasons. The first reason is to make the state and federal laws mutually supportive and allow the state the ability to positively influence cleanup. While federal law has continued to evolve in response to the problem, the state's law has not. Federal law envisions a state-federal partnership. These amendments are necessary to fulfill this role.

The second reason is to satisfy requirements the Environmental Protection Agency (EPA) has put on the state. EPA has asked the state to develop authorities equivalent to Superfund so that the state can direct cleanup at some of the most contaminated sites in the state.

The final reason is to keep state law current with the development of hazardous waste response laws in other states. Thirty-eight states now have state versions of the federal Superfund law.

These amendments are crucial to bringing federal money into the state for hazardous waste cleanups. Over the past five years, the EPA has given over $8 million to the state to use for remedial activities at a few state sites. Of this sum, over $7 million has gone to in-state contractors. These contractors have developed technical expertise that is marketable across the country. During this time, the EPA has spent about twice this much on other Montana sites with little of that amount going to in-state contractors. These amendments will allow the state to obtain a greater portion of these funds.

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The state also has the ability to save money and time. While most state and federal costs are initially supported by the Superfund, these costs are recovered from private responsible parties. It is in both the public's and private business's interest to get the most for their dollar. State personnel and overhead costs are considerably less than those of the EPA. State and regional contractors costs also tend to be less than the national average. Furthermore, the state's decision-making process is less complex than the EPA decision-making process. Decisions can be made more rapidly, resulting in both a savings of time and money. Finally, the state can de-escalate the tensions in the process. Often the EPA and responsible parties find themselves deadlocked during negotiation because of a fear on the responsible parties' part of setting national legal precedent. Working with the state under state law should reduce this concern resulting in more cleanup and less legal argument.

Finally, these authorities would enable the state to respond to hazardous waste problems at over 140 sites in Montana. Currently, the state's ability to remediate these smaller sites is restricted by existing limitations in the law. The proposed amendments will remedy these problems. The threat of contamination within a community is a threat that the public wants cleaned up quickly to avoid endangering public health or welfare.

The amendments will expand the authorities provided to the state in the following ways:

-- Information gathering authorities are created. The state cannot respond to the problems at a site unless it knows who was doing what, and where.

-- Administrative order authority is created. Presently, the state can request a party to undertake some given action, but if the party refuses, the only option the state has is to do it itself. This results in a drain on scarce resources of the state.

-- Prohibits parties tying the state up in court while nothing is done. A party will always have its day in court, but not until they have responded to an immediate threat to public health or welfare.

-- Establishing a standard of review for a reviewing court. Because much of what happens in cleaning up a leaking hazardous waste site involves activities on the frontier of science, a reviewing court need only review the paper record created by the state and the affected party. This saves judicial resources while still presenting the whole case to a judge.

-- Protection is created for all contractors involved in hazardous waste response activities. The threat of liability for undertaking remedial actions is a real and serious threat to in-state contractors. This amendment provides protection for these contractors.

-- Enables the department to assess administrative penalties. This is crucial in being able to compel parties to undertake activities

requested by the state in a timely manner. By forcing the state to go to court to compel performance, substantial amounts of time are consumed without any cleanup occurring. The result is that public health and welfare are jeopardized. When questions of public health are involved, it is crucial to act quickly.

-- Creates additional defenses for private industry in an action to recover costs incurred by the state.

-- Creates an innocent landowner defense which protects anyone who acquires a parcel of land which turns out to be contaminated.

-- Provides a mechanism to protect parties who cooperate with the state. The state will have the ability to bar any later actions by any other entity against a party that settles its liability.

-- Condemnation authority is created for property that is seriously contaminated with hazardous waste. This allows the state to ensure that a landowner with contaminated property gets a fair price for his property. The costs of the condemnation may be recovered from a party responsible for the contamination.

-- Cleanup standards are established which will ensure that all cleanups meet some minimum requirements.

-- Requires that the state attempt to recover all costs it incurs in cleaning up a site, if a responsible party is available.

-- Ensures that the public is fully involved in any decisions regarding a cleanup.

-- Allows the department to oversee a cleanup performed by a responsible party.

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BILL NO. SB 33

SECTION 9 (Amends existing Section 75-10-715)	Responsibility and Liability (includes lengthy innocent landowner defense)	CERCLA 107
SECTION 10 (New)	Settlements	CERCLA 122(a)
SECTION 11 (New)	Condemnation - State lien re: contaminated property	CERCLA 107(e)
SECTION 12 (New)	Degree of cleanup; Permit exception	CERCLA 121
SECTION 13 (New) [Clarifies existing authority in 75-10-715(3)]	Action to recover State's response costs	CERCLA 107,113
SECTION 14 (New)	Public notice - comment	CERCLA 122(i)
SECTION 15 (New)	Cleanup Agreements	CERCLA 122(a)
SECTION 16 (New)	Contribution and liability; apportionment among responsible parties	CERCLA 113

SENATE JUDICIARY
EXHIBIT NO. 1, 04
DATE 2-14-89
BILL NO. SB 38

PARALLEL PROVISIONS OF MONTANA COMPREHENSIVE CLEANUP AND RESPONSIBILITY ACT (CECRA) BILL (LC 854) TO FEDERAL SUPERFUND LAW*

Mini Superfund Bill Section	Subject Area	Parallel Federal Superfund Section 42 USC 9601 et seq.
SECTION 2 (Amends 75-10-702)	Definitions	CERCLA 101
SECTION 3 (Amends 75-10-704)	Generally resembles the federal Hazardous Substance Response Trust Fund (Superfund). State Fund is not fee-funded and currently has a zero balance	CERCLA 221
SECTION 4 (New) [Expands existing authority in 75-10-711(2)]	Investigations; access to information; associated orders	CERCLA 104(e)
SECTION 5 (New) (Expands existing authority in 75-10-715)	Administrative orders to take remedial action; civil penalties	CERCLA 106, 113
SECTION 6 (Slightly amends existing Section 75-10-712)	Emergency Response	CERCLA 106
SECTION 7 (New)	Limits liability of remedial action contractors	CERCLA 119
SECTION 8 (New)	Administrative penalties (Maximum federal penalties 25,000-75,000 per day; proposed for State - 1,000/day)	CERCLA 109

*CERCLA: Comprehensive Environmental Response Compensation and Liability Act of 1980 (Was Amended in 1986 by SARA - Superfund Amendment and Reauthorization Act of 1986)

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 2-14-8
BILL NO. SB 385

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILD

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 5

Montana
Non-NPL Sites

Site	City	County
Apex Mill - Bannack State Park	Bannack	Beaverhead (001)
Big Hole Post Plant	Dillon	Beaverhead (001)
Ermont Mill - Mill Tailings	Argenta	Beaverhead (001)
Hirschy Corrals	Jackson	Beaverhead (001)
Thorium City Waste Dump	Grant	Beaverhead (001)
Tungsten Mill - Mill Tailings	Glen	Beaverhead (001)
Diamond Asphalt Co.	Chinook	Blaine (005)
Kenison Pole Plant	Townsend	Broadwater (007)
Joliet Weed District	Joliet	Carbon (009)
Burlington Northern Derailment Site	East Bridger	Carbon (009)
Anaconda Minerals Co., Great Falls Ref.	Black Eagle	Cascade (013)
Falls Chem Inc.	Great Falls	Cascade (013)
Great Falls Ref - Phillips Petroleum	Black Eagle	Cascade (013)
Great Falls City Landfill (Wiremill Road)	Great Falls	Cascade (013)
Great Falls City Landfill (25th Ave)	Great Falls	Cascade (013)
Malmstrom Air Force Base	Great Falls	Cascade (013)
Western By-Products	Great Falls	Cascade (013)
Geraldine Airport	Geraldine	Chouteau (013)
Ft. Keogh Livestock & Research Lab	Miles City	Custer (017)
Miles City Oil Refinery	Miles City	Custer (017)
Miles City Rail Yard	Miles City	Custer (017)
Miles City Oil Refinery	Miles City	Custer (017)
Miles City Livestock Center	Miles City	Custer (017)
Richey Airport	Richey	Dawson (021)
Anaconda Company Smelter	Anaconda	Deer Lodge (023)
Montana Radiation	Anaconda	Deer Lodge (023)
Arro Oil Refinery	Lewistown	Fergus (027)
Berg Post and Pole	Lewistown	Fergus (027)
Central Post & Treating Plant	Lewistown	Fergus (027)
Charles M. Russell Refuge	Turkey Joe Landing	Fergus (027)
Continental Oil Co., Lewistown Ref.	Lewistown	Fergus (027)
Anaconda Aluminum Company	Columbia Falls	Flathead (029)
Beaver Wood Products	Columbia Falls	Flathead (029)
Creston Post and Pole Yard	Kalispell	Flathead (029)
Kalispell Pole & Timber Co. Inc.	Kalispell	Flathead (029)
Kalispell Landfill (Cemetary Road)	Kalispell	Flathead (029)
Kalispell Landfill (Willow Glen Road)	Kalispell	Flathead (029)
Larry's Post and Treating Co.	Columbia Falls	Flathead (029)
North American Oil Refinery	Kalispell	Flathead (029)
Plum Creek Evergreen	Kalispell	Flathead (029)
Reliance Refining Co.	Kalispell	Flathead (029)
Turner Post Treatment Co	Whitefish	Flathead (029)

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Montana
Non-NPL Sites

Site	City	County
Yale Oil Corp.	Kalispell	Flathead (029)
Asbestos Mine (Karst)	Bozeman	Gallatin (031)
Bozeman Old City Landfill	Bozeman	Gallatin (031)
Development Technology	Bozeman	Gallatin (031)
Ideal Basic Ind, Plant Site Area	Three Forks	Gallatin (031)
Mercer Post Plant	Bozeman	Gallatin (031)
Summit-Dana Ltd.	Bozeman	Gallatin (031)
Jet Fuel Refinery	Mosby	Garfield (033)
Blackfeet Post and Pole	Browning	Glacier (035)
Carter Oil Ref	Cutbank	Glacier (035)
Chevron USA Inc. Browning Bulk Plant	Browning	Glacier (035)
Poisoned Oats Dspl	Browning	Glacier (035)
Union Oil - Cutbank Ref	Cutbank	Glacier (035)
Granite Timber	Philipsburg	Granite (039)
Philipsburg Mining Area	Philipsburg	Granite (039)
Sluice Gulch Leaking Mine Adit	Philipsburg	Granite (039)
Burlington Northern Racetrack Pond	Havre	Hill (041)
Burlington Northern Krezelak Pond	Havre	Hill (041)
Chippewa Pole	Box Elder	Hill (041)
Havre Refinery	Havre	Hill (041)
Basin Mining Site	Basin	Jefferson (043)
Corbin Flats	Jefferson City	Jefferson (043)
Fohner Meadow	Jefferson City	Jefferson (043)
Jefferson County Weed District	Clancy	Jefferson (043)
High Ore Mine	Basin	Jefferson (043)
Kaiser Cement	Montana City	Jefferson (043)
Wickes Smelter	Wickes	Jefferson (043)
Lake County Weed District	Ronan	Lake (047)
Golden Messenger Mine	York	Lewis and Clark (049)
Goldsil Mining Company	Marysville	Lewis and Clark (043)
Helena Landfill	Helena	Lewis and Clark (049)
MT Dept. of Highways Shop	Helena	Lewis and Clark (049)
Montana State Chem Lab Bureau	Helena	Lewis and Clark (049)
Mother Lode Gold & Silver Ltd.	East Helena	Lewis and Clark (049)
Safety Kleen	Helena	Lewis and Clark (049)
Scratchgravel Landfill	Helena	Lewis and Clark (049)
Asarco Inc. Troy Unit	Troy	Lincoln (053)
Libby Groundwater Contamination	Libby	Lincoln (053)
St. Regis Paper	Libby	Lincoln (053)
Valley Garden Vat	Ennis	Madison (057)
Marble Creek Post Yard	Superior	Mineral (061)
Milwaukee Road -- Haugen	Haugen	Mineral (079)
Milwaukee Road Right-of-Way	St. Regis	Mineral (079)
Borden Inc.	Missoula	Missoula (063)
Burlington Northern Derailment Site	Missoula	Missoula (063)
Burlington Northern Derailment Site	Evaro	Missoula (063)
Hart Oil	Missoula	Missoula (063)
J & N Post and Pole	Evaro	Missoula (063)
Milltown Reservoir Sediments	Milltown	Missoula (063)
Missoula Landfill	Missoula	Missoula (063)

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 2-14-8
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Montana
Non-NPL Sites

Site	City	County
Real Log Homes Mfg. Site	Missoula	Missoula (063)
Roundup Landfill	Roundup	Mussellshell (065)
Jardine Arsenic Tailings	Jardine	Park (067)
Mclaren Mill Tailings	Cooke City	Park (067)
Mission Wye	Livingston	Park (067)
Strongs Post Yard	Livingston	Park (067)
Weowna Oil Refinery	Winnett	Petroleum (069)
Malta Airport	Malta	Phillips (071)
Conrad Refining Co.	Conrad	Pondera (073)
Midwest Refining Co.	Conrad	Pondera (073)
Burlington Northern Derailment Site	Garrison	Powell (077)
Milwaukee Roundhouse	Deer Lodge	Powell (077)
Rocky Mountain Phosphate	Garrison	Powell (077)
Bass Creek Post & Pole Plant	Stevensville	Ravalli (061)
Bitterroot Valley Sanitary Landfill	Victor	Ravalli (081)
S & W Sawmill, Inc.	Darby	Ravalli (081)
McCulloch Purchase Station	Fairview	Richland (083)
Burlington Northern Derailment Site	Bainville	Roosevelt (085)
Tule Creek Gas Plant/Crystal Oil	Poplar	Roosevelt (085)
Wolf Point Ref. (Kenco Refining)	Wolf Point	Roosevelt (085)
Bonneville Power Administration	Hot Springs	Sanders (089)
Paradise Tie Treatment	Paradise	Sanders (089)
Thompson Falls Reservoir	Thompson Falls	Sanders (089)
US Antimony Corp	Thompson Falls	Sanders (089)
Laurel Oil and Refining Co.	Butte	Silver Bow (093)
Roundup Refining Co.	Butte	Silver Bow (093)
Silver Bow Refinery	Butte	Silver Bow (093)
Stauffer Chem Co.	Ramsay	Silver Bow (093)
Big West Oil	Kevin	Toole (101)
Texaco - Sunburst Works	Sunburst	Toole (101)
Treasure State Refining Co.	Shelby	Toole (101)
Big Horn Oil & Refining Co.	Billings	Yellowstone (111)
Billings Sanitary Landfill	Billings	Yellowstone (111)
Burlington Northern Inc. Prop.	Billings	Yellowstone (111)
Coffman Lumber & Treatment Co., Inc.	Billings	Yellowstone (111)
Conoco Landfarm	Billings	Yellowstone (111)
Conoco Billings Ref	Billings	Yellowstone (111)
Empire Sand and Gravel	Billings	Yellowstone (111)
Exxon Ref - Old Flare Site	Billings	Yellowstone (111)
Farmers Union Central Exchange/Cenex	Laurel	Yellowstone (111)
General Electric Co.	Billings	Yellowstone (111)
Lohoff Gravel Pit	Billings	Yellowstone (111)
Montana Power Co. Frank Bird Plant	Billings	Yellowstone (111)
Montana Power Co. JE Corette Plant	Billings	Yellowstone (111)
Montana Sulphur and Chem	East of Billings	Yellowstone (111)
Prairie View Recreational Park	Billings	Yellowstone (111)
Russel Oil Co.	Billings	Yellowstone (111)
Scott Feed Lot	Billings	Yellowstone (111)
Union Tank Car Co.	Laurel	Yellowstone (111)
Yale Oil of South Dakota	Billings	Yellowstone (111)

SENATE JUDICIARY
EXHIBIT NO. 1 10.9
DATE 2-14-89
BILL NO. SB 385

TOWN OF SUNBURST
BOX 245
SUNBURST, MONTANA 59482
937-2141

DEPT OF HEALTH & ENVIRONMENTAL SERVICES
SOLID & HAZARDOUS WASTE BUREAU
COGSWELL BUILDING
HELENA, MONTANA 59620

6/15/88

ATTN: CAROL FOX

DEAR CAROL,

THE COMMUNITY OF SUNBURST HAS WHAT WE FEEL TO BE A MAJOR PROBLEM THAT WE HOPE YOU WILL BECOME INTERESTED IN. RECENTLY I HAVE RECEIVED MANY COMPLAINTS FROM THE CITIZENS REGARDING THE OLD TEXACO REFINERY LEFT ABANDONDED IN THE MIDDLE OF OUR TOWN.

THE CITIZENS OF THIS COMMUNITY FEEL THAT THE OLD REFINERY IS A TERRIBLE EYESORE FROM AN ERA GONE BY, BUT THIS IS NOT THE NATURE OF THE COMPLAINTS I HAVE BEEN RECEIVING. THE PEOPLE OF SUNBURST FEEL THAT THE OLD REFINERY POSES AN IMMEDIATE THREAT TO THIER HEALTH AND TO THE HEALTH OF THIER CHILDREN. THEY FEEL THAT THEY HAVE BEEN TREATED UNFAIRLY, LEFT WITH THE MESS FROM THIS UNSIGHTLY REFINERY. ALL OVER AMERICA AND AROUND THE WORLD, PEOPLE ARE DISCOVERING DAILY THAT THIER HEALTH AND WELL BEING HAVE BEEN UNKNOWINGLY THREATENED BY SILENT AND DEADLY WASTES LEFT BEHIND BY CONGLOMERATES WHOSE NEEDS FOR THESE FACILITIES HAVE BECOME OBSOLETE.

WON'T YOU PLEASE HEED THE CRIES OF THE CITIZENS OF OUR TINY BUT IMPORTANT COMMUNITY, AND TAKE AN INTEREST TODAY IN THE SOLVING OF THIS PROBLEM? THANKING YOU IN ADVANCE FOR YOUR HELP IN THIS IMPORTANT MATTER.

SINCERLY,

James Suta

JAMES SUTA
MAYOR OF SUNBURST

SENATE JUDICIARY
EXHIBIT NO. 1 & 2
DATE 2-14-8
BILL NO. SB 38

TOWN OF KEVIN

P. O. BOX 137
KEVIN, MONTANA 59454

PHONE (406) 337-2141

May 24, 1988

Governor Ted Schwinden
Capitol Station
Helena, Montana 59620

RE: Hazardous Waste Site
Big West Refinery
Kevin, Montana

Dear Governor Schwinden:

I am writing to you on behalf of the Kevin Town Council and the residents of the Town of Kevin.

We have been actively pursuing the clean up of an abandoned refinery site located within the corporate town limits of Kevin, Montana.

Several large dogs have become entrapped and died in the open sludge areas of this site. We are concerned that one of our children may be the next casulty of the site. The district sanatarian has also had a complaint filed with him concerning stock water contamination from the site.

Also, of great concern isFMHA and HUD mortgage insurance rejection because of the location of 90% of Kevin's homes in proximity to the hazardous waste site.

E.P.A. has the site listed and has studied the site. The have determined that the site is not eligible for "Superfund" designation because of only 208 persons being affected. They have released the site to the State of Montana.

We believe that the State Department of Health and Environmental Sciences-Solid and Hazardour Waste Division-has determined who the responsible parties are in relation to the Kevin refinery site.

We are having a problem in understanding why it is taking so long for the State to take action when responsible parties have been determined.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 2-14-85
BILL NO. SB 38

We are asking for your help in the following three areas.

1. Securing assistance for immediate fencing of the site to prevent access,

2. Requesting that appropriate state agencies quickly move ahead with a demand that the responsible parties clean up the site.

3. Requesting that HUD and FMHA remove their mortgage insurance restriction for the areas of Kevin that are not affected by the site.

Thank you for your assistance with this problem in our community.

Sincerely,

Town of Kevin

Robert Fagen, Mayor

RF:m
cc:Dr. L. Bonderud

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 2-14-89
BILL NO. SB 385

TESTIMONY FOR SB 385

Mr. Chair, members of the Senate Judiciary Committee, for the record, my name is Chris Kaufmann and I represent the Montana Environmental Information Center and our members across the state.

We have a lot of big messes in Montana, and we know we're going to have to clean them up. These hazardous waste sites are now widely recognized as problems that affect our quality of life, public health, and future viability. The question is not whether we should clean them up--everybody already knows that. The question is, how much control are we as a state going to have in that cleanup.

I want to say clearly that this is not a railroad bill; it is not a Butte bill. We're talking here about 150 sites all across the state, and those are only the ones that have happened to come to our attention. The list is not the result of any investigation. There is one site in each of Chouteau and Lake counties; there are 3 in Powell county; 8 in Missoula County; 8 in Lewis and Clark County; 12 in Flathead County, and 19 in Yellowstone County. These sites include wood treatment plants, landfills, smelters and refinerys, mines, industries. They are the result of leaking underground storage tanks, improper use of pesticides, and spills. The waste, tailings, slag, or residue contain such hazardous substances as PCP's, dioxin, cyanide, arsenic, lead, copper, mercury, gasoline, chlorinated solvents, sulfuric acid, asbestos, sulfer dioxide, amonia--to name but a few. They contaminate our soils, our surface water and our groundwater. I don't want to eat and drink and breath this stuff.

We environmentalists have often been labeled as "bad for business". The bill you have before you is an example of a bill that's good for business and the environment. First, businesses do not want to locate in hazardous waste dumps. Montana already has a stigma of having more superfund sites than any of its neighbors. We don't need any more bad publicity. Second, the business of cleaning up Montana can bring lots of federal and corporate dollars into the state. There are a growing number of Montana companies with expertise in toxic cleanup. Let's keep cleanup dollars here in Montana, instead of giving EPA the power to charge 10 times as much to Montana sites and funnel the cleanup dollars to Denver companies.

We urge a do pass on SB 385.

EXHIBIT NO. 3, p. 1
DATE 2-14-89
BILL NO. SB 385

Mr. Chairman and members of the Committee, for the record I am Don Peoples representing the Butte-Silver Bow Local Government. I rise in support of SB 385.

Mr. Chairman and members of the committee, the question here today is whether or not the State of Montana wants to be a serious player in assuring the environmental clean-up and protection of this state's environment. This bill (SB 385) recognizes the state's obligation to assure that its citizens are not subjected to hazardous or deleterious substances. For the first time in Montana's history, it puts teeth into a law that addresses the total environment.

Those of us who live in Butte-Silver Bow are well aware of the results of improper use of our environment. In Butte-Silver Bow, there are literally hundreds of examples, where individuals and companies, either knowingly or unknowingly, have violated the environment. Mine waste and tailings with heavy metal content, arsenic, lead, cadnium - ore scattered through the community. The health hazards associated with these heavy metals are well documented.

Surface water has been contaminated, and there is a distinct threat to the large underground aquifer as a result of the current mine flooding situation. We regard this latter situation as perhaps the most critical environmental issue of our life time.

As you know much of the Butte area is on the National Priority List of the Environmental Protection Agency. The area has been studied to an extent that goes beyond description. The fact of the matter, however, that little positive physical change

SENATE JUDICIARY
EXHIBIT NO. 3, p.2
DATE 2-14-89
BILL NO. SB 385

is occurring. The EPA process is incredibly complicated and extremely slow in achieving results. Delays are common, and the process of clean-up and remediation can be stopped by a series of procedures that appear to be built into the process. Frankly, Mr. Chairman and members of the Committee, we in Butte-Silver Bow are extremely frustrated by the process and lack of action.

We believe the Comprehensive Environmental Cleanup and Responsibility Act is the right thing for the State of Montana to do. This state has an obligation to its residents. It matters not if these people live in Butte, Livingston, or Ekalaka. This act defines the necessary procedures, and establish a plan of action for the Department of Health and Environmental Sciences (DHES) to deal with their responsibility to the citizens of Montana.

Some may claim it is anti-business and will give Montana a reputation of being against the development of industry and business. Nothing could be further from the truth. It is a common sense approach that assures protection of Montana's environment, and assures that this state will be a serious player in protecting the environment.

Mr. Chairman, members of the Committee, I urge your favorable response to this critical piece of legislation.

SENATE JUDICIARY
EXHIBIT NO. 4, p.1
DATE 2-14-89
BILL NO. SB 385

COMMENTS ON SB 385

To: Senate Judiciary Committee

From: Ward Shanahan, Lobbyist ARCO
301 First Bank Building
Helena, Montana 59624
Telephone 442-8560

Subject: Proposed Changes in SB 385 to Bring it in Line with the Federal Superfund Act

General Comments

ARCO's interest is in seeing consistency between the State and Federal Superfund laws as they relate to the ability of the government and the PRPs to achieve expeditious settlements which lead to rapid cleanups. Any inconsistencies between State and Federal Superfund laws lead to confusion and disagreement as opposed to understanding and agreement and settlement.

Specific Comments

(References are to page and line number of Introduced Bill)

Pg. 3, Line 16 - This paragraph goes beyond Superfund and would lead to inconsistencies between the two laws.

Pg. 4, line 4 - The term managing activities at is very broad and lacks definition.

Pg. 4, line 23 - Crude oil is exempted under Federal Superfund.

Pg. 8, line 23 - Any duly authorized officer, employee . . . will make this statement consistent with Superfund.

Pg. 9, line 1 - The statement regarding information or documents is very broad and needs further definition.

Pg. 9, line 12 - The paragraph starting on this line goes beyond Federal Superfund.

Pg. 9, line 18 - "Otherwise enforcing the provisions of this part" is very broad and needs definition.

Pg. 10, line 12 - Any duly authorized officer, employee . . . makes this statement consistent with Superfund.

SENATE JUDICIARY
EXHIBIT NO. 4 p. 2
DATE 2-14-89
BILL NO. SB 385

Pg. 15, line 3 - "A person who without sufficient cause violates . . . makes this statement consistent with Superfund.

Pg. 20, line 11 - "Otherwise responsible" needs definition.

Pg. 22, line 12 - Had any ownership authority, or control during the time of deposition and was not caused . . . makes this consistent with Superfund.

Pg. 29, line 5 - Criteria or limitations that address and are well suited to the site conditions needs definition.

Pg. 29, line 10 - (A) Use permanent to the maximum extent practical is more appropriate language.

Pg. 29, line 17 - Substitute shall for may.

Pg. 29, line 24 - The record referenced in this line needs further definition.

Pg. 31, lines 14 & 15 - A responsible party should have the right to request a public hearing.

Pg. 32, line 2 - Insert "shall negotiate and" between "department" and "in".

Pg. 33, line 10 - Substitute "or" for "and".

Pg. 34, line 23 - Delete section 21.

Respectfully,

Ward A Shanahan

Ward A. Shanahan, D.D.

7149W

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-14-8

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		left
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		left.
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SB 385

NAME: Doug Parker DATE: 2/14/89

ADDRESS: 2727 Airport Rd

PHONE: 406 443 4150

REPRESENTING WHOM? Hydrometrics

APPEARING ON WHICH PROPOSAL: SB 385

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE 2-14-89

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Opp
Janet Ellis	Audubon	SB 385	✓	
Tex Fate	M.A.A.	SB 369		
Chris Kaufmann	MEIC	SB 385	✓	
Carol Mosher	Mt. Cattle Women	SB 369	✓	
Steve Mandeville	Self	SB 369		L
Gordon Hubbleston	MSE INC.	SB 385	✓	
Doug Parker	Hydrometrics	SB 325	✓	
Lorna Frank	Farm Bureau	SB 369	X	
Bob Smith	Attorney General	SB 369	✓	
Mignon Waterman	Mt. Assoc. of Churches	SB 369	✓	
Ward Shanahan b. Al)	ARCO	SB 385		
Stan Bradshaw	Trout Unlimited	SB 385		
Robert Dozier	N.P.R.C.	SB 385	✓	
Ann Wilson	Sierra Club	SB 385	✓	
Leo Barry	BNRR	SB 385	with amend	
Don Peoples	Butte Silver Bow	SB 385	✓	
Howard Hess	Flathead Co. Comm	SB 385	✓	
Bob Jane	FWP	SB 385	✓	
Tim Davison	GIA	SB 369	✓	

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-15-89 (evening) Senate Bill No. 385 Time

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN PINSONEAULT		
SEN.YELLOWTAIL		
SEN. CRIPPEN		

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Harp Amend Harp. D P A

D NAN
"

SF-3 (Rev. 1987)

Senator Yellowtail asked if the "cause" portion of statute wouldn't apply in that instance. Mr. Browning said that law has been interpreted saying that drug use would have to be shown on the job, as opposed to drug use affecting the performance on the job.

Senator Yellowtail thought it would be simpler to address that portion of the law. Mr. Browning said that several options had been considered, but that this seemed to be the best. He said few employers would fit into the classification described by the bill, largely because of the expense to the employer in paying for the cost.

Amendments and Votes: Senator Pinsoneault MOVED that amendments 2 and 3 be adopted by the committee. The motion CARRIED unanimously (See Exhibit 3.)

Senator Yellowtail moved amendment #1. The motion CARRIED unanimously.

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault moved that SB 373 DO PASS AS AMENDED. The motion FAILED on a tie vote with Senators Bishop, Brown, Halligan, Mazurek, and Yellowtail voting NO, the effect of which was that the bill remained in the committee.

DISPOSITION OF SENATE BILL 385

Discussion: Senator Harp distributed amendments to the committee (See Exhibit 4.) Tom Eggert, representing the Department of Health, explained the amendments, and said that Burlington Northern and the Department of Health concur with them. (See notes written onto the amendments.)

Amendments and Votes: Senator Harp MOVED to separate Amendment #22 from the set of amendments. The MOTION CARRIED UNANIMOUSLY.

Senator Mazurek asked why it would be effective upon approval. Tom Eggert said the sooner the state is able to demonstrate its ability to do the job, the sooner it receives the funds. Leo Berry said that Senator Harp and the department agreed on the immediate effective date. The

advantage from the state's standpoint is that is allows the state to negotiate with the EPA immediately for a particular site. The disadvantage is that many people won't realize that and may be surprised by it.

Tom Eggert said the site being sought is in Butte Post and Pole, the old Arco site and one other one. Senator Mazurek said the danger to the state is that responsible parties will put on pressure and the EPA may say the state cannot wait until July 1 to start. He wondered if Montana citizens wouldn't be better off dealing with Montanans regarding this problem than the EPA. Senator Harp answered yes, and said that the cost would be beneficial as well.

Recommendation and Vote: Senator Harp MOVED that the committee accept the amendments, with the exception of Amendment #22. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Harp moved that SB 385 DO PASS AS AMENDED. The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 9:20 p.m.

SENATOR BRUCE D. CRIPPEN, Chairman

BC/rj

min215rj.sr

Exh 4 2/15/89
SB 385 pg 1

Amendments to Senate Bill No. 385
First Reading Copy (WHITE)

Requested by Senator Harp
For the Committee on Judiciary

4025

Prepared by Valencia Lane
February 15, 1989

1. Title, line 18.
Following: "MCA;"
Insert: "AND"

2. Title, lines 19 and 20.
Following: "DATE" on line 19
Strike: remainder of line 19 through "COSTS" on line 20

3. Page 2, line 1.
Following: page 1
Insert: "NEW SECTION. Section 2. Purpose. The purposes of this part are to:

(1) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(2) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

(3) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken."
Renumber: subsequent sections

4. Page 3, line 22.
Following: "resources""
Strike: remainder of line 22
Insert: "means"

5. Page 3, line 24.
Following: "other"
Strike: "resource"
Insert: "such resources"

6. Page 3, line 25.
Following: "state"
Insert: "of Montana"

7. Page 4, line 1.
Following: "or"
Strike: "pertaining"
Insert: "appertaining"

same as fed.

8. Page 5, line 18.
Following: "restoration,"
Insert: "mitigation,"

to clarify meaning of remedial action

9. Page 6, line 1.
Following: "department"
Insert: "the United States or any federal agency"

Arco asked for

10. Page 7, lines 15 and 16.
Following: "~~include~~" on line 15
Strike: remainder of line 15 through "the" on line 16
Insert: "The"

BN request because the purpose of the bill is not to retain a revolving fund.

11. Page 8, line 2.
Following: "penalties,"
Insert: "natural resource"

clarification to damage def.

12. Page 8, line 22.
Following: "Any"
Insert: "authorized"

clarifies who has the authority

13. Page 9, line 18.
Strike: "duly"

clarify

14. Page 10, line 12.
Following: "Any"
Insert: "authorized"

"

15. Page 10, line 15.
Following: "the"
Insert: "authorized"

"

16. Page 11, line 13.
Following: "an"
Insert: "authorized"

"

17. Page 11, line 20.
Following: "(6),"
Insert: "where the court determines that there may be an imminent and substantial threat to public health, safety, or welfare

BN to clarify under what circumstance the court will/not allow suit to act.

or the environment"

18. Page 13, lines 16 through 18.
Following: "environment." on line 16
Strike: remainder of line 16 through line 18

Sen. Harp's request for validity to pass to House

19. Page 14, line 23.
Following: "release" on line 23
Insert: "that may pose an imminent and substantial threat to public health, safety, or welfare or the environment"

clarify

20. Page 15, line 8.
Following: "continues."
Insert: "In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require."

consistency additions; BN request

21. Page 15, line 21.
Following: line 20
Insert: "(d) An action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court."

consistency by Dept.

22. Page 26, line 25.
Following: "state"
Strike: "may"
Insert: "shall"

Recommended language - BN doesn't agree with this; It puts duty on the state to go after parties who don't comply.

Deleted by

23. Page 31, line 3.
Following: "before"
Insert: "final"
Following: "approval"
Insert: "by the director of the department"

Conforming amendments

24. Page 31, line 4.
Following: "order"
Insert: "on consent issued pursuant to 75-10-711"
Following: "or"
Insert: "before judicial approval of a"

25. Page 32, line 3.
Following: "may"

Grace's to increase clean-up

Insert: "negotiate and"

26. Page 33, line 10.
Following: "transporting,"
Strike: "and"
Insert: "or"

27. Page 34, line 9.
Following: "[Sections 1,"
Strike: "4, 7, 8, and 10 through 16"
Insert: "2, 5, 8, 9, and 11 through 17"

28. Page 34, line 12.
Following: "[Sections 1,"
Strike: "4, 7, 8, and 10 through 16"
Insert: "2, 5, 8, 9, and 11 through 17"

29. Page 34, line 23 through page 35, line 1.
Strike: section 21 in its entirety
Renumber: subsequent section

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-8-87

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO. SB 385 DATE 3-8-89

SPONSOR Sen. Harp

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Ward Fenchel	Franke Ranch	Amend	
Larry Lahd	DHES	✓	
Gene Vuckovich	Anaconda-Deer Lodge Co	✓	
W.R. Williams	ARCO COAL	AMEND	
Tucker Hill	Champion Int'L	Amend	
Les Bracy	BNRR	Amend	
Bob Lane	FWP	Support	
Janet Ellis	Audubon	support w/ amendments to HB 143	
Dave Brown	House Distr. #72-Butte	w/ amd. X	
Don Ingels	Mt Chamber of Commerce	Amend	
Jerome Anderson	Mont Power Co	Amended	
George Ochenski	SELF	✓	
Danielle Fallan	MPA	amend	
Chris Kaufmann	MEIC	Amend	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

it was an increasing trend to turn to fee systems, and that some had been in place for quite some time. He could not respond to their rate of success, and added that Montana had a rural solid waste program, while most of the other states with a fee system had larger programs. He said there could be a net savings for the sate with the technical assistance availability of a larger staff.

REP. GIACOMETTO asked how many FTE's the department would need. MR. LEITER said to effectively operate the current state system, the department would need double the staff they have now. To operate the program under EPA's subtitle D requirements, which he saw as inevitable, the department would need more than that. He said this program would generate $65,000, and more if solid waste was imported from outside of Montana. He said with this money, they would be able to add a full time staff member and a 1/2 time clerical position.

REP. GIACOMETTO asked what would have to be done to fund the program if the more stringent standards become effective. MR. LEITER said that the proposed regulations, which would probably be adopted, were far more stringent than the state's current regulations. He estimated that the tipping rates would triple or quadruple under the new EPA regulations and additional staff would be needed.

Closing by Sponsor:

REP. RANEY closed.

HEARING ON SB 385

Presentation and Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 4, said the bill revised the state law relating to remedial action at hazardous waste sites, and would conform the state law to the updated federal Superfund Act of 1986. He said it included the enforcement authority and he gave an overview of the bill. He said he felt the Department of Health and Environmental Sciences was better equipped to oversee the Superfund activities in the state, and felt that it would be desirable to get away from the national priority list. He said the bill would result in a reduction in cost to the responsible parties, and clean-up would be expedited.

SEN. HARP said that issues had arisen on the Senate floor, which he had clarified with Jim Foley of Pat Williams' office. He said that the operator of the Milltown dam would be exempted from liability for the Clark Fork pollution, which would bring the proposed legislation into conformance with the federal act. He said if that operator, Montana Power

Company, were connected with that liability, to the tune of $1 billion, the rate payers of Montana would be affected.

SEN. HARP spoke of another issue, the exclusion of petroleum products. DHES felt this petroleum product language was needed back in the bill because of the Montana leaking underground storage tank program, and the concern that the means of enforcement to recover costs was not presently available. However, he said the industry said the crude oil section was not included in the federal act. He told the committee that if the purpose of this bill was to completely conform with the federal act, so be it. If the purpose of the act was to be broader, with the flexibility to have remedial action and enforcement in other areas, then the merits of that purpose needed to be discussed.

SEN. HARP said the bill gave the department broad authority for information gathering and response. He referred to the penalty of $10,000 per day and also $1,000 in administrative penalty per day. He said the intent was to indicate the importance of the clean-up and to make sure that the responsible parties were in fact held responsible. He said that the limitation of liability for remedial contractors hopefully would encourage interest in the clean-up activities.

Testifying Proponents and Who They Represent:

Rep. Dave Brown, House District 72
Gene Vuckovich, Anaconda-Deer Lodge County
Tom Eggert, Bureau of Solid and Hazardous Waste, DHES
Larry Lloyd, DHES
Bob Lane, Department of Fish, Wildlife and Parks
Ward Shanahan, Atlantic Richfield and Chevron Corporations
Jerome Anderson, Shell Western Exploration and Production Company
Don Ingels, Montana Chamber of Commerce
Leo Berry, Burlington Northern
Chris Kaufmann, Montana Environmental Information Center
Tucker Hill, Champion International
Janet Ellis, Montana Audubon Legislative Fund
Janelle Fallan, Montana Petroleum Association
George Ochenski, self, Helena

Proponent Testimony:

REP. DAVE BROWN, House District 72, said the bill would provide teeth in Montana law so that the state could comply with the federal Superfund Act. He said that without that compliance, the state could never take over and run Montana's related Superfund activities. He said the Senate amendments would cause controversy, and decisions on these were in fact policy decisions. He said the bill did need to include at least what was covered in the federal act with regards to petroleum products. If the committee chose to go

beyond that, REP. BROWN said he would defend that decision on the floor. He added that there were some purely petroleum related spills that did not have any toxic waste involvement. As the bill stood now, He said those spills could not be cleaned up until the petroleum got into the ground water.

GENE VUCKOVICH, City-County Manager, testified as set forth in EXHIBIT 3.

TOM EGGERT, Special Assistant Attorney General assigned to the Superfund Branch of the Bureau of Solid and Hazardous Waste, testified as set forth in EXHIBIT 4. He said that generally, the industry was in support of the state taking the lead in the clean-up of Superfund sites, or even in keeping sites off the National Priority List. He said state control of clean-up would be cheaper, quicker and more efficient for industry. In addition, the stigma attached to a company being a responsible party for a site on the National Priority List would be avoided.

MR. EGGERT also distributed a list of the 150 sites in the state needing clean-up (EXHIBIT 5). These sites did not make the National Priority List and were not eligible for federal money.

MR. EGGERT addressed the amendment placed on the bill in the Senate, deleting petroleum. He said this was the most important aspect to the department, and gave the rationale of the department for the inclusion of petroleum in the definition of hazardous or deleterious substance as set forth in EXHIBIT 6.

MR. EGGERT offered some amendments (EXHIBIT 7), developed by working with the Governor's Office and with industry. He closed, saying that the bill was good for the environment and not damaging to industry.

LARRY LLOYD, Administrator, Environmental Sciences Division, made one point in support of the bill. He said SB 385 had been expressly developed to bring Montana codes into conformity with the federal codes. He said the concern that the department had gone further than bringing the codes into conformance was unfounded. He reminded the committee that the provision covering petroleum products was included in the 1985 legislation. He said the bill was the amalgamation of some of the authority the department had had for a number of years. He said the petroleum authorization had enabled the department to perform clean-up and recover costs. He asked that the committee amend the bill to include petroleum products in the bill.

BOB LANE, Chief legal counsel for DFWP, testified as set forth in EXHIBIT 8.

WARD SHANAHAN distributed amendments to the bill (EXHIBIT 9), and said he had been participating with the department in the discussions regarding this bill. He said the discussion about petroleum products had arisen because petroleum was a regulated substance, not a hazardous substance in federal law. The Montana law would have made petroleum a hazardous substance, and would then make Superfund damages applicable to the whole range of petroleum and petroleum products. He said the amendment was offered in the Senate to change that.

MR. SHANAHAN said the third amendment he offered dealt with the inspection authority of the department, and the striking of language to avoid the possibility of lawsuits over divulged information. The fourth amendment allowed for the retention of confidentiality, particularly relevant since regulated substances such as petroleum were being put under regulation by DHES in addition to hazardous and deleterious wastes.

JEROME ANDERSON, a proponent with amendments, and an industry representative in conferences with the department on this bill, said the principal interest Shell had in this legislation regarded crude oil in production facilities. He said it was his understanding that it had not been their desire to put crude oil in production facilities within the purview of the petroleum product definition. He said that the amendment offered by Mr. Eggert did not totally address this particular point, and offered an amendment that did (EXHIBIT 10).

DON INGELS reinforced the portion of Mr. Eggert's testimony that stated that the Montana business community was concerned and responsible about hazardous waste, the federal regulations thereof, and wished the regulations to be enforced at the state level.

LEO BERRY, attorney, said he had participated in the amendment process. He said Burlington Northern supported the department's amendments, in particular the third amendment which pertained to settlements. He also said in considering existing law together with this legislation, Montana's law would go beyond the federal law.

MR. BERRY said he would like to submit an amendment pertaining the Environmental Quality Protection Fund (EXHIBIT 11).

CHRIS KAUFMANN testified in strong support of the bill, and said it covered sites all over the state with various types and levels of toxic pollution. She spoke about the Senate amendment and in particular about the policy decision the sponsor referred to regarding the comprehensiveness of the bill. She reminded the committee that the policy decision on petroleum products was made in 1985, and was not something new being asked for in this bill. Regarding conforming to the federal law, she suggested that it was

possible that some language needed to be different, and specific to the problems of Montana. She spoke in favor of the inclusion of petroleum products in the definition, saying that the ability of the state to spend that money on clean-up and then to recover the cost was the biggest club the state had to ensure that the clean-up was done.

TUCKER HILL spoke as set forth in EXHIBIT 12. He said Champion International opposed the bill as it passed the Senate because it proposed new language not consistent with federal law, which would cause debates over interpretation of definitions rather than the encouragement of speedy clean-up. He offered amendments to "fix" the bill, and supported the amendments offered by Ward Shanahan.

JANET ELLIS testified in support of the bill which she said would give the state control of Superfund sites. She cited the Clark Fork in particular as a site that affected wildlife and wildlife habitat. Regarding exempting petroleum products, she asked the committee that these be included back in the Mini-Superfund Law.

JANELLE FALLAN testified that her organization did not like the dual regulation of crude oil. She said crude oil was regulated by the Board of Oil and Gas Conservation and covered by the Montana codes, and that the Water Quality Bureau had authority over refined products already. She said that the bill would give the state broader authority and said that would be a decision for the committee to make. She said the Petroleum Association would support the Anderson amendment that put petroleum back in, but exempted crude oil that was already regulated.

GEORGE OCHENSKI reminded the committee of the debate on this issue in 1985. He said this bill gave the state a way to deal with clean-up problems that would not be handled by the federal Superfund Act because they were not big enough. He said the law had not been funded originally, and in 1987, 4% of the RIT was set aside in the Environmental Quality Protection Fund. He said that the first place the law was used was in Livingston, and now the industry was coming in with an exemption request. He cautioned the committee against granting exemptions.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. RANEY asked if the bill stood as it was now, how would a clean-up of the Burlington Northern diesel plume at Whitefish be accomplished. MR. EGGERT said the department would not be able to clean that up as the bill stood now. REP. RANEY asked the same question with regards to Livingston, and MR. EGGERT said there was a savings clause, stating that this law would not affect any obligations that have occurred, and since the law suit had been filed, the law would not affect the situation at Livingston.

REP. GIACOMETTO asked about the leaking underground storage tanks, and if HB 603 would cover that problem. MR. EGGERT said there was no cost-recovery section in any bill that dealt with underground storage tanks. He said one of the conditions from the federal government on the state was that the state must have the ability to cost recover whatever federal money the state would expend cleaning up underground storage tank leaks. He added that if the petroleum exclusion stayed in the law, the department would no longer have that cost-recovery authority, and would have to return the money to the federal government.

REP. COHEN asked if another department representative could answer the question. LARRY MITCHELL, DHES, Underground Storage Tank Program, said not all tanks would be subject to the program proposed in HB 603. Ultimately, he said the responsible party would be responsible for initial costs of $25,000. Whenever the department would get into the situation where a responisble party would not accept the responsibility to clean up, the department would need some resources available to either require the clean up, or have the capability of responding itself. He said the federal LUST Trust dollars would still be the source for that type of activity, but the cost recovery authority would be necessary to convince the responsible party to clean-up the area himself or for the department to undertake the project.

REP. ROTH asked Art Wittich, Office of the Governor, to explain the relationship between this and the federal law, and the conditions under which the state would lose federal money. MR. WITTICH said when the Superfund bill was passed in 1980, it did not include petroleum and did not at the present. However, in between then and now, the federal government also passed a Leaking Underground Storage Tank (LUST) Law. He said the state, to keep programs consistent, instead of putting in a new LUST law, attached the provisions to its existing Superfund law so that cost recovery and remedial action appeared in the Mini-Superfund Law. He said that would be fine if it was desired to regulate substances that the federal government did not regulate; i.e., petroleum. He said the main problem with the Senate deletion was that if petroleum were removed from the Mini-Superfund Law, the state would be prevented from administering its LUST program. That was why it was crucial to add back into the bill at least underground storage of petroleum, or the state

would lose its ability to get federal matching funds for leaking underground storage tanks.

MR. WITTICH said there was a universe of petroleum, only part of which was below ground. Federal LUST concerned underground; the state's law included both underground and above ground. He said it would be a policy matter for the state to decide if the inclusion of the universe of petroleum would continue under the Superfund bill.

REP. ROTH asked again why this could not be covered under HB 603, and MR. Wittich said HB 603 would cover and regulate certain tanks.

REP. BROOKE said that the petroleum product definition as a hazardous substance was a problem, and asked Mr. Eggert if it was only a hazardous substance when it got into the water. MR. EGGERT said the accurate definition for petroleum if it was to be put back into the bill would be "deleterious substance", the term used since 1985. He said petroleum could be considered a hazardous and deleterious substance other than when it was in water. He cited the example of a petroleum spill on soil which would render the soil toxic and would threaten the groundwater supply.

REP. BROOKE noted that on the list of identified state clean-up sites, 33 may relate to petroleum, and asked if these represented a variety of petroleum problems or storage tanks. MR. EGGERT said there were no storage tank problems on that list.

REP. HARPER asked for clarification of a section of the Eggert amendments dealing with responsibility for minor parts of a contamination. MR. EGGERT gave the example of the Idaho Pole site had contamination in the groundwater. He said the company operating it now had operated it for 50 years. Burlington Northern had owned the property for a portion of that time but did not contribute to the contamination, and was not connected with the management of the business. However, because they were the owner, they could be held liable for the contamination and the clean-up. The provision Rep. Harper was referring to would allow BN to come to the department and contest their liability.

REP. HARPER asked if this could possibly be a loophole if the director of the department was particularly sympathetic to industry. MR. EGGERT said the language would allow the director to excuse those particular industries that he/she was favorable towards. He said there was no check on this in the law. The check outside the law would be a party or industry who was not excused bringing an action, saying the department was acting arbitrarily and capriciously, and not toward the public good. REP. HARPER asked if a public interest group or local government would have any recourse, and MR. EGGERT said they would not have recourse. He said

the federal law had a citizens' suit provision that enabled citizens to bring an action in response to EPA action inconsistent with its duties, but the state law did not have this provision.

REP. MOORE asked Janelle Fallan what the industry was doing voluntarily to prevent leaks and clean up spills. MS FALLAN said any time there was a waste or a spill, it represented the loss of a product that could go to market. She suggested that being a for-profit company was a greater regulator on the prevention of waste in the form of leaks and spills.

REP. COHEN asked Mr. Anderson to respond to the question, and he expressed a concern that there had been a loose use of the word petroleum in the hearing. He distinguished between petroleum and petroleum product, petroleum being the crude oil, and petroleum product being gasoline, diesel fuel, etc. He said he had not seen the site list, but ventured to say that there was no site on the list that had to do with production facilities of crude oil.

Closing by Sponsor:

SEN. HARP closed.

HEARING ON SB 295

Presentation and Opening Statement by Sponsor:

SEN. HAGER, Senate District 48, introduced the bill which limited the liability on a person who provided advice, assistance, or action in response to actual or threatening spill of a hazardous substance. He said the bill had been requested by a friend who worked for Petrolane, and said Montana was one of six states without this legislation. He said that this company could not have participated in the response to the train wreck in Helena without signing a 2 1/2 page release.

Testifying Proponents and Who They Represent:

Roger Thorvilson, DHES, Solid and Hazardous Waste Division
Ben Havdahl, Montana Motor Carrier Association
Leo Berry, Burlington Northern
Ray Blehm, Montana State Fire Marshall
Lorna Frank, Montana Farm Bureau

Proponent Testimony:

ROGER THORVILSON, Hazardous Waste Program Manager, testified for the department as set forth in EXHIBIT 13.

BEN HAVDAHL said his association supported the bill. He said that although hazardous substances were transported under

EXHIBIT 3
DATE 3-8-89
HB SB 385

TESTIMONY PRESENTED ON SENATE BILL 385, MARCH 8, 1989, 3:00 P.M., PRESENTED BY GENE VUCKOVICH, CITY-COUNTY MANAGER, ANACONDA-DEER LODGE COUNTY.

Mr. Chairman and Committee Members:

I wish to offer testimony as a proponent of Senate Bill 385.

By way of background information, Anaconda-Deer Lodge County has suffered severe economical setbacks in recent years, with the closure of the Anaconda Reduction Works by the parent company, Atlantic Richfield, in 1980, and the subsequent dismantling of the world's largest smelter. Because of the closure, many allied businesses have had to cease operations in Anaconda-Deer Lodge County.

The site of the former smelter and much of the adjoining area have since been designated as part of the Clark Fork Superfund Site and listed on the National Priority List of Superfund Sites. This designation has made it most difficult to attract new industry and/or business to the area. However, we view the said designation as an asset rather then a liability. We fully realize that much work and many dollars will be needed to comply with the clean-up of this area. It is our hope that much of the work can and will be done be area firms and residents.

It has been our experience in working with lead agencies, PRP's and other local interested parties, that whenever the State of Montana took the lead on a project, such as Silver Bow Creek Project, that the project decisions were made in a more timely manner, more of the work was contracted to Montana firms, more local help was used and answers to questions were more readily available.

The very nature of the bureaucracy of an agency as large as that of the EPA, tends to slow down the decision making process and thereby retards the implementation of remedial action on said project. We have found that it is much easier to get to and acquire answers from the decision makers of State Governmental Agencies then those of Federal Agencies such as the EPA, whose real decision makers are located in Denver, Colorado or Washington, D.C.

Because of the complexity of becoming qualified as a contractor for the EPA, many of the firms who are awarded contracts for work on the Clark Fork Superfund Site by the EPA are out of state firms who are located in areas where major EPA offices are located, such as Denver and/or Washington, D.C.

It is our opinion that the enactment of this proposed legislation would be beneficial to Montana Contractors, those firms who have been designated as PRP's, Local Governments, the State of Montana

and its environment.

I therefore ask your support of this piece of legislation and urge you to give a "do pass" recommendation to Senate Bill 385.

Thank you.

EXHIBIT 4
DATE 3-8-89
HB SB 385

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR — COGSWELL B

STATE OF MONTANA

FAX # (406) 444-2606 — HELENA, MONTAI

January 13, 1989

DHES TESTIMONY ON LC 854 (SB 385)
DHES SPONSORED MINI-SUPERFUND BILL

Montanans have in common the goals of economic development and maintaining Montana's quality of life. Passage of the Montana Environmental Response Compensation and Liability Act (MERCLA) supports these goals. Hazardous materials contamination is now a widely recognized problem that threatens our quality of life, the public's health, and our future viability. Tremendous amounts of public and private resources are being expended on the problem nationwide. With greater state involvement, an increased portion of the effort, including jobs and expenditures (both public and private), will be in Montana. Should the state prefer to minimize its role in relation to the federal government, most of the resources will remain in Denver and Washington, D.C. Jobs will be exported and local control over decisions intimately affecting Montana's future will be lost.

The Montana Environmental Response, Compensation and Liability Act (MERCLA) is a comprehensive amendment of existing hazardous waste response authority. These amendments are necessary for several reasons. The first reason is to make the state and federal laws mutually supportive and allow the state the ability to positively influence cleanup. While federal law has continued to evolve in response to the problem, the state's law has not. Federal law envisions a state-federal partnership. These amendments are necessary to fulfill this role.

The second reason is to satisfy requirements the Environmental Protection Agency (EPA) has put on the state. EPA has asked the state to develop authorities equivalent to Superfund so that the state can direct cleanup at some of the most contaminated sites in the state.

The final reason is to keep state law current with the development of hazardous waste response laws in other states. Thirty-eight states now have state versions of the federal Superfund law.

These amendments are crucial to bringing federal money into the state for hazardous waste cleanups. Over the past five years, the EPA has given over $8 million to the state to use for remedial activities at a few state sites. Of this sum, over $7 million has gone to in-state contractors. These contractors have developed technical expertise that is marketable across the country. During this time, the EPA has spent about twice this much on other Montana sites with little of that amount going to in-state contractors. These amendments will allow the state to obtain a greater portion of these funds.

The state also has the ability to save money and time. While most state and federal costs are initially supported by the Superfund, these costs are recovered from private responsible parties. It is in both the public's and private business's interest to get the most for their dollar. State personnel and overhead costs are considerably less than those of the EPA. State and regional contractors costs also tend to be less than the national average. Furthermore, the state's decision-making process is less complex than the EPA decision-making process. Decisions can be made more rapidly, resulting in both a savings of time and money. Finally, the state can de-escalate the tensions in the process. Often the EPA and responsible parties find themselves deadlocked during negotiation because of a fear on the responsible parties' part of setting national legal precedent. Working with the state under state law should reduce this concern resulting in more cleanup and less legal argument.

Finally, these authorities would enable the state to respond to hazardous waste problems at over 140 sites in Montana. Currently, the state's ability to remediate these smaller sites is restricted by existing limitations in the law. The proposed amendments will remedy these problems. The threat of contamination within a community is a threat that the public wants cleaned up quickly to avoid endangering public health or welfare.

The amendments will expand the authorities provided to the state in the following ways:

-- Information gathering authorities are created. The state cannot respond to the problems at a site unless it knows who was doing what, and where.

-- Administrative order authority is created. Presently, the state can request a party to undertake some given action, but if the party refuses, the only option the state has is to do it itself. This results in a drain on scarce resources of the state.

-- Prohibits parties tying the state up in court while nothing is done. A party will always have its day in court, but not until they have responded to an immediate threat to public health or welfare.

-- Establishing a standard of review for a reviewing court. Because much of what happens in cleaning up a leaking hazardous waste site involves activities on the frontier of science, a reviewing court need only review the paper record created by the state and the affected party. This saves judicial resources while still presenting the whole case to a judge.

-- Protection is created for all contractors involved in hazardous waste response activities. The threat of liability for undertaking remedial actions is a real and serious threat to in-state contractors. This amendment provides protection for these contractors.

-- Enables the department to assess administrative penalties. This is crucial in being able to compel parties to undertake activities

requested by the state in a timely manner. By forcing the state t go to court to compel performance, substantial amounts of time ar consumed without any cleanup occurring. The result is that publi health and welfare are jeopardized. When questions of public healt are involved, it is crucial to act quickly.

-- Creates additional defenses for private industry in an action tc recover costs incurred by the state.

-- Creates an innocent landowner defense which protects anyone who acquires a parcel of land which turns out to be contaminated.

-- Provides a mechanism to protect parties who cooperate with the state. The state will have the ability to bar any later actions by any other entity against a party that settles its liability.

-- Condemnation authority is created for property that is seriously contaminated with hazardous waste. This allows the state to ensure that a landowner with contaminated property gets a fair price for his property. The costs of the condemnation may be recovered from a party responsible for the contamination.

-- Cleanup standards are established which will ensure that all cleanups meet some minimum requirements.

-- Requires that the state attempt to recover all costs it incurs in cleaning up a site, if a responsible party is available.

-- Ensures that the public is fully involved in any decisions regarding a cleanup.

-- Allows the department to oversee a cleanup performed by a responsible party.

EXHIBIT 5
DATE 3-8-89
HB SB 385

Montana
Non-NPL Sites

Site	City	County
Yale Oil Corp.	Kalispell	Flathead (029)
Asbestos Mine (Karst)	Bozeman	Gallatin (031)
Bozeman Old City Landfill	Bozeman	Gallatin (031)
Development Technology	Bozeman	Gallatin (031)
Ideal Basic Ind, Plant Site Area	Three Forks	Gallatin (031)
Mercer Post Plant	Bozeman	Gallatin (031)
Summit-Dana Ltd.	Bozeman	Gallatin (031)
Jet Fuel Refinery	Mosby	Garfield (033)
Blackfeet Post and Pole	Browning	Glacier (035)
Carter Oil Ref	Cutbank	Glacier (035)
Chevron USA Inc. Browning Bulk Plant	Browning	Glacier (035)
Poisoned Oats Dspl	Browning	Glacier (035)
Union Oil - Cutbank Ref	Cutbank	Glacier (035)
Granite Timber	Philipsburg	Granite (039)
Philipsburg Mining Area	Philipsburg	Granite (039)
Sluice Gulch Leaking Mine Adit	Philipsburg	Granite (039)
Burlington Northern Racetrack Pond	Havre	Hill (041)
Burlington Northern Krezelak Pond	Havre	Hill (041)
Chippewa Pole	Box Elder	Hill (041)
Havre Refinery	Havre	Hill (041)
Basin Mining Site	Basin	Jefferson (043)
Corbin Flats	Jefferson City	Jefferson (043)
Fohner Meadow	Jefferson City	Jefferson (043)
Jefferson County Weed District	Clancy	Jefferson (043)
High Ore Mine	Basin	Jefferson (043)
Kaiser Cement	Montana City	Jefferson (043)
Wickes Smelter	Wickes	Jefferson (043)
Lake County Weed District	Ronan	Lake (047)
Golden Messenger Mine	York	Lewis and Clark
Goldsil Mining Company	Marysville	Lewis and Clark
Helena Landfill	Helena	Lewis and Clark
MT Dept. of Highways Shop	Helena	Lewis and Clark
Montana State Chem Lab Bureau	Helena	Lewis and Clark
Mother Lode Gold & Silver Ltd.	East Helena	Lewis and Clark
Safety Kleen	Helena	Lewis and Clark
Scratchgravel Landfill	Helena	Lewis and Clark
Asarco Inc. Troy Unit	Troy	Lincoln (053)
Valley Garden Vat	Ennis	Madison (057)
Marble Creek Post Yard	Superior	Mineral (061)
Milwaukee Road -- Haugen	Haugen	Mineral (079)
Milwaukee Road Right-of-Way	St. Regis	Mineral (079)
Borden Inc.	Missoula	Missoula (063)
Burlington Northern Derailment Site	Missoula	Missoula (063)
Burlington Northern Derailment Site	Evaro	Missoula (063)
Hart Oil	Missoula	Missoula (063)
J & N Post and Pole	Evaro	Missoula (063)
Missoula Landfill	Missoula	Missoula (063)
Real Log Homes Mfg. Site	Missoula	Missoula (063)
Roundup Landfill	Roundup	Musselshell (065
Jardine Arsenic Tailings	Jardine	Park (067)

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

EXHIBIT 5
3-8-89
HB 563
Amdmts

Montana
Non-NPL Sites

Site	City	County
Apex Mill - Bannack State Park	Bannack	Beaverhead (001)
Big Hole Post Plant	Dillon	Beaverhead (001)
Ermont Mill - Mill Tailings	Argenta	Beaverhead (001)
Hirschy Corrals	Jackson	Beaverhead (001)
Thorium City Waste Dump	Grant	Beaverhead (001)
Tungsten Mill - Mill Tailings	Glen	Beaverhead (001)
Diamond Asphalt Co.	Chinook	Blaine (005)
Kenison Pole Plant	Townsend	Broadwater (007)
Joliet Weed District	Joliet	Carbon (009)
Burlington Northern Derailment Site	East Bridger	Carbon (009)
Anaconda Minerals Co., Great Falls Ref.	Black Eagle	Cascade (013)
Falls Chem Inc.	Great Falls	Cascade (013)
Great Falls Ref - Phillips Petroleum	Black Eagle	Cascade (013)
Great Falls City Landfill (Wiremill Road)	Great Falls	Cascade (013)
Great Falls City Landfill (25th Ave)	Great Falls	Cascade (013)
Malmstrom Air Force Base	Great Falls	Cascade (013)
Western By-Products	Great Falls	Cascade (013)
Geraldine Airport	Geraldine	Chouteau (013)
Ft. Keogh Livestock & Research Lab	Miles City	Custer (017)
Miles City Oil Refinery	Miles City	Custer (017)
Miles City Rail Yard	Miles City	Custer (017)
Miles City Oil Refinery	Miles City	Custer (017)
Miles City Livestock Center	Miles City	Custer (017)
Richey Airport	Richey	Dawson (021)
Anaconda Company Smelter	Anaconda	Deer Lodge (023)
Montana Radiation	Anaconda	Deer Lodge (023)
Arro Oil Refinery	Lewistown	Fergus (027)
Berg Post and Pole	Lewistown	Fergus (027)
Central Post & Treating Plant	Lewistown	Fergus (027)
Charles M. Russell Refuge	Turkey Joe Landing	Fergus (027)
Continental Oil Co., Lewistown Ref.	Lewistown	Fergus (027)
Anaconda Aluminum Company	Columbia Falls	Flathead (029)
Beaver Wood Products	Columbia Falls	Flathead (029)
Creston Post and Pole Yard	Kalispell	Flathead (029)
Kalispell Pole & Timber Co. Inc.	Kalispell	Flathead (029)
Kalispell Landfill	Kalispell	Flathead (029)
Kalispell Landfill (Cemetary Road)	Kalispell	Flathead (029)
Kalispell Landfill (Willow Glen Road)	Kalispell	Flathead (029)
Larry's Post and Treating Co.	Columbia Falls	Flathead (029)
North American Oil Refinery	Kalispell	Flathead (029)
Plum Creek Evergreen	Kalispell	Flathead (029)
Reliance Refining Co.	Kalispell	Flathead (029)
Turner Post Treatment Co	Columbia Falls	Flathead (029)

EXHIBIT 5
DATE 3-8-89
HB SB 385

Non-NPL Sites

Site	City	County
Mclaren Mill Tailings	Cooke City	Park (067)
Mission Wye	Livingston	Park (067)
Strongs Post Yard	Livingston	Park (067)
Weowna Oil Refinery	Winnett	Petroleum (069)
Malta Airport	Malta	Phillips (071)
Conrad Refining Co.	Conrad	Pondera (073)
Midwest Refining Co.	Conrad	Pondera (073)
Burlington Northern Derailment Site	Garrison	Powell (077)
Milwaukee Roundhouse	Deer Lodge	Powell (077)
Rocky Mountain Phosphate	Garrison	Powell (077)
Bass Creek Post & Pole Plant	Stevensville	Ravalli (061)
Bitterroot Valley Sanitary Landfill	Victor	Ravalli (081)
S & W Sawmill, Inc.	Darby	Ravalli (081)
McCulloch Purchase Station	Fairview	Richland (083)
Burlington Northern Derailment Site	Bainville	Roosevelt (085)
Tule Creek Gas Plant/Crystal Oil	Poplar	Roosevelt (085)
Wolf Point Ref. (Kenco Refining)	Wolf Point	Roosevelt (085)
Bonneville Power Administration	Hot Springs	Sanders (089)
Paradise Tie Treatment	Paradise	Sanders (089)
Thompson Falls Reservoir	Thompson Falls	Sanders (089)
US Antimony Corp	Thompson Falls	Sanders (089)
Laurel Oil and Refining Co.	Butte	Silver Bow (093)
Roundup Refining Co.	Butte	Silver Bow (093)
Silver Bow Refinery	Butte	Silver Bow (093)
Stauffer Chem Co.	Ramsay	Silver Bow (093)
Big West Oil	Kevin	Toole (101)
Texaco - Sunburst Works	Sunburst	Toole (101)
Treasure State Refining Co.	Shelby	Toole (101)
Big Horn Oil & Refining Co.	Billings	Yellowstone (111)
Billings Sanitary Landfill	Billings	Yellowstone (111)
Coffman Lumber & Treatment Co., Inc.	Billings	Yellowstone (111)
Conoco Landfarm	Billings	Yellowstone (111)
Conoco Billings Ref	Billings	Yellowstone (111)
Empire Sand and Gravel	Billings	Yellowstone (111)
Exxon Ref - Old Flare Site	Billings	Yellowstone (111)
Farmers Union Central Exchange/Cenex	Laurel	Yellowstone (111)
General Electric Co.	Billings	Yellowstone (111)
Lohoff Gravel Pit	Billings	Yellowstone (111)
Montana Power Co. Frank Bird Plant	Billings	Yellowstone (111)
Montana Power Co. JE Corette Plant	Billings	Yellowstone (111)
Montana Sulphur and Chem	East of Billings	Yellowstone (111)
Prairie View Recreational Park	Billings	Yellowstone (111)
Russel Oil Co.	Billings	Yellowstone (111)
Scott Feed Lot	Billings	Yellowstone (111)
Union Tank Car Co.	Laurel	Yellowstone (111)
Yale Oil of South Dakota	Billings	Yellowstone (111)

EXHIBIT 6
DATE 3-8-89
SB 385
Jen Lacy

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDIN

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 5962

Solid & Hazardous Waste Bureau
Telephone: (406) 444-2821

Petroleum should be included in the definition of hazardous or deleterious substance for the following reasons:

- The Montana Leaking Underground Storage Tank program, which currently has $1.2 million of federal money allocated to it, would lose all funding if the state is unable to assure that it has the ability to cost recover all money expended. The cost recovery authority which this program uses is found within the existing parts of this law. If petroleum is excluded, this authority would not be available to that program. With no federal money available, the cost of cleaning up leaks from the state's 18,000 tanks will fall on Montana's taxpayers.

- This is not an amendment to existing law. Petroleum has been defined as a hazardous or deleterious substance since 1985.

- The Department of Health and Environmental Sciences's Mini-Superfund Program has identified two abandoned oil refineries in Sunburst and Kevin, Montana, as requiring the Department's immediate attention. The only authority available to clean up these sites lies within this law.

- The state's history suggests that there may be many additional sites where the primary concern is petroleum. Currently, in addition to the two abandoned oil refineries which the state has begun action on, petroleum sites in Cut Bank and Livingston are focuses of state action.

EXHIBIT 1
DATE 3-8-89
HB SB 385

AMENDMENTS TO SENATE BILL 385
Third Reading Copy (Blue)
Requested by the Department of Health & Environmental Sciences
For the Committee on Natural Resources

1. Page 4, line 9

   Insert: ";and"

2. Page 4, line 10

   Insert: "(d) any petroleum product."

3. Page 5, lines 20-25

   Insert: "(9) Petroleum product" includes gasoline, crude oil (except for crude oil released from an oil well that has been recorded by the board of oil and gas pursuant to 82-10-402), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F. and 14.7 pounds per square inch absolute)."

EXHIBIT 7
DATE 3-8-89
HB SB 385

AMENDMENTS TO SENATE BILL 385
Third Reading Copy (Blue)
Requested by the Department of Health & Environmental Sciences
For the Committee on Natural Resources

1. Page 28, line 19

Insert: "(4) Whenever practicable and in the public interest, as determined by the director of the department, the department shall, as promptly as possible, reach a final settlement with a person liable under 75-10-715 in an administrative or civil action under 75-10-711, if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department, the conditions in either of the following subparagraphs (A) or (B) are met:

(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that person to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that person to the facility.

(B) The person:

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

EXHIBIT 1
DATE 3-8-89
HB SB 385

AMENDMENTS TO SENATE BILL 385
Third Reading Copy (Blue)
Requested by the Department of Health & Environmental Sciences
For the Committee on Natural Resources

1. Page 31, lines 22 through 24

Following: "expenses."

Strike: "The department's certification of the state's remedial action costs is prima facie evidence that the costs are reasonable and are consistent with this part."

2. Page 32, line 5

Following: "costs."

Insert: "The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part."

EXHIBIT 7
DATE 3-8-89
HB SB 385

AMENDMENTS TO SENATE BILL 385
Third Reading Copy (Blue)
Requested by the Department of Health & Environmental Sciences
For the Committee on Natural Resources

1. Page 23, line 4

Following: "exceed"

Strike: "two"

Insert: "three"

EXHIBIT 7
DATE 3-8-89
~~HB~~ SB385

AMENDMENTS TO SENATE BILL 385
Third Reading Copy (Blue)
Requested by the Department of Health & Environmental Sciences
For the Committee on Natural Resources

1. Page 4, line 9

   Insert: ";and"

2. Page 4, line 10

   Insert: "(d) any petroleum product."

3. Page 5, lines 20-25

   Insert: "(9) "Petroleum product" includes gasoline, crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F. and 14.7 pounds per square inch absolute)."

EXHIBIT 8
DATE 3-8-89
HB SB 385

SB 385
March 7, 1989

Testimony presented by Bob Lane, Department of Fish, Wildlife, and Parks.

The Federal Superfund Act requires the Governor of each state to designate state officials to act on behalf of the public as trustees for natural resources. The Director of the Montana Department of Fish, Wildlife and Parks has been designated as one of the public trustees for the assessment of natural resource damages claims in Montana. In addition the Department is charged by State statute with the responsibility of managing, preserving and enhancing our fisheries and wildlife resources.

The Department is currently in the process of assessing natural resource damages under the Federal Superfund Act on the Clark Fork River and other sites. There has been extreme damage to the Clark Fork River Basin. If not for the damage caused by mining operations the Clark Fork River could have been one of our finest fisheries.

The public deserves to be compensated for this loss. If there is proper cleanup and reclamation, the Clark Fork may yet become a treasured fishery. The Department believes that the public will be better represented and the cleanup more effectively enforced if this bill is passed.

The Department is also concerned about long term damages to natural resources caused by petroleum products leaking from abandoned refineries and storage facilities. There should be no doubt that the bill also pertains to these hazardous wastes. The Department supports the amendment proposed by the Department of Health and Environmental Sciences to add "petroleum products" to the definition of "hazardous or deleterious substance" as was originally proposed in SB 385.

The bill will enable the State to take the lead in enforcing hazardous waste cleanup and assessing damages at listed and non-listed sites. In addition, the EPA will be in a better position to defer to and rely on the State where the State has authority under its own laws. DFWP believes that this bill will lead to a more efficient and effective division of labor with the EPA towards the common goals of clean up of hazardous waste and compensating the public for damages already caused.

EXHIBIT 9
DATE 3-8-89
HB SB 385

March 8, 1989 (H) Natural Resources Committee

Testimony of Ward A. Shanahan

Mr. Chairman and members of the committee:

My name is Ward Shanahan. I am a registered lobbyist for Atlantic Richfield. I respectfully submit the following proposed amendments to SB 385 for your consideration:

PROPOSED AMENDMENTS TO SENATE BILL NO. 385
(Third Reading)

1. Page 4, line 14.
Following: "Montana"
Strike: "or"

2. Page 4, lines 15 and 16.
Following: "controlled by" on line 15
Strike: "or ~~pertaining~~ APPERTAINING to"

3. Page 11, line 18 through page 12 line 8.
Strike: subsection (4) in its entirety
(renumber following sections)

4. Page 13, lines 7 through 10.
Following: "confidential" on line 7
Strike: remainder of line 7 through "confidential" on line 10

7233W

EXHIBIT
DATE 3-1-89
HB SB385

AMENDMENTS TO SENATE BILL 385
Third Reading Copy (Blue)
Requested by the Department of Health & Environmental Sciences
For the Committee on Natural Resources

1. Page 4, line 9

   Insert: ";and"

2. Page 4, line 10

   Insert: "(d) any petroleum product."

3. Page 5, lines 20-25

   Insert: "(9) Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82 MCA), fuel oil, diesel oil or fuel [redacted], oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F. and 14.7 pounds per square inch absolute)."

EXHIBIT 11
DATE 3-8-89
HB SB385

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STANLEY T. KALECZYC*
LEO BERRY
J. DANIEL HOVEN
OLIVER H. GOE
KATHARINE S. DONNELLEY
JON METROPOULOS

*MEMBER OF MONTANA AND THE DISTRICT OF COLUMBIA BARS

March 9, 1989

Representative Bob Raney, Chairman
House Natural Resources Committee
Capitol Station
Helena, MT 59620

Re: Senate Bill 385-Amendments

Dear Representative Raney:

As per my testimony on behalf of Burlington Northern Railroad Company, enclosed are the amendments I proposed to strike penalties from the Environmental Quality Protection Fund. With the amendments, SB 385 would still provide for response costs and natural resource damages to be deposited in the fund. The amendments would not limit the courts or the Department from assessing civil or administrative penalties.

The reason for the amendments is solely related to public policy. It has been a stated position of the Department to secure monies for the fund so that it can properly respond to problems. Burlington Northern Railroad Company has no objections to that principle. However, to grant the agency the authority to assess administrative penalties and then place the penalties in a fund which the agency desires to increase creates a doubt as to the agency's purpose in assessing or settling penalties.

It should be recognized that SB 385, when combined with existing law, grants tremendous authority to the agency and that authority will not only be directed toward large corporations. The law will affect virtually every business, regardless of size, that handles a "hazardous or deleterious substance." One need only review the list provided the Committee by the Department to understand the potential application of the law and its impacts on businesses of all sizes.

If I can be of any assistance to the Committee, do no hesitate to contact me.

Sincerely,

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By _____
Leo Berry

/srg
Enclosure
cc: Natural Resources Committee

EXHIBIT
DATE 3-8-89
HB SB385

AMENDMENTS TO THIRD READING COPY OF SB 385

1. Page 8, line 24, following "all", strike "penalties,".

2. Page 8, line 24, following "Resource", strike "damages," insert "damages".

3. Page 9, strike all of lines 2 through 4 and reletter the following subsections.

4. Page 21, strike all of lines 3 through 5.

Old Highway 200
Milltown, Montana 59851
406 258-5511

Tucker Hill
Director—Public Affairs

EXHIBIT 12
DATE 3-8-
HB SB385

Champion
Champion International Corporation

March 9, 1989

Rep. Bob Raney, Chairman
House Committee on Natural Resources
Capitol Station
Helena, MT 59620

Dear Chairman Raney:

Champion International Corporation proposes the following amendments to SB 385, Third Reading:

1. Page 9, line 14.
   Following: "undertake"
   Strike: "any investigative or other"

2. Page 9, line 16.
   Following: "appropriate for"
   Strike: "determining the need for remedial action, choosing or taking a remedial action, or otherwise"
   Insert: "carrying out or"

3. Pages 21 and 22.
   Strike: lines 16 through 25 Page 21
   and lines 1 through 5 Page 22
   Insert:

   a) a person who owns or operates a facility where hazardous substances may have been disposed and from which there has been a release or threatened release of a hazardous substance;

   b) a person who at the time of disposal of a hazardous substance owned or operated a facility where the hazardous substance was disposed of and from which there has been a release or threatened release of a hazardous substance;

   c) a person who generated and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance, or arranged with a transporter for transport of the substance for disposal or treatment at a facility from which there has been a release or a threatened release of a hazardous substance; and

EXHIBIT 12
DATE 3-8-89
HB SB385

d) a person who accepts or has accepted a hazardous substance for transport to a disposal or treatment facility selected by such person, from which there has been a release or threatened release of a hazardous substance.

4. Pages 28,29,30.
Strike: lines 19 through 25 Page 28 and lines 1 through 25 Page 29 and line 1 and 2 Page 30.

Beyond these specific amendments we would also suggest deletion of the words "or deleterious" throughout the text of the bill because its meaning is unclear and also because " deleterious" is not defined in federal law. Champion also wishes to state our support for the four amendments offered by Ward Shanahan on behalf of ARCO. If these changes are made, Champion International can support passage of SB 385.

Thank you for considering these proposed changes to SB 385.

Sincerely,

Tucker Hill

Tucker Hill

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 3-10-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy			✓
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

CS-30

REP. HARPER moved to amend the amendment by inserting lubricating oil. The motion on the amendement to the amendment CARRIED unanimously.

REP. HARPER asked Jerome Anderson if HB 143 picked up where this bill left off, and MR. ANDERSON said yes. The motion on the amended amendments CARRIED, with Rep. Owens voting no.

Recommendation and Vote: REP. BROOKE moved that SB 385 BE CONCURRED IN AS AMENDED. The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 8:20 p.m.

Bob Raney
REP. RANEY, Chairperson

BR/cm

5612.min

DISPOSITION OF SB 91

Hearing 3/1/89

Motion: REP. COHEN moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. COHEN moved amendments which were distributed to the committee. He said Rep. Moore and he met with Dan Mizner and DSL on all of these issues, with the end product being these amendments. He said they had looked at conservation easements and covenants, and reached an accord.

REP. GIACOMETTO asked if the sponsor of the bill was in agreement. REP. COHEN said the sponsor said he trusted the changes made by the subcommittee. The motion on the amendments CARRIED unanimously.

Recommendation and Vote: REP. COHEN moved the bill DO PASS AS AMENDED. The motion CARRIED unanimously.

DISPOSITION OF SB 371

Hearing 3/8/89

Motion: REP. ADDY moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

DISPOSITION OF HB 385

Hearing 3/8/89

Motion: REP. ADDY moved the bill BE CONCURRED IN.

Substitute Motion: REP. OWENS moved to TABLE the bill.

Vote: The substitute motion FAILED.

Amendments, Discussion, and Votes: REP. HARPER moved an amendment to re-insert petroleum products into the bill. REP. RANEY clarified that the amendments in questions would put all of the language that the Senate struck with regards to petroleum products back into the bill, with the exception of crude oil at production facilities. He said lubricating oil was inadvertently omitted and should be inserted back in.

STANDING COMMITTEE REPORT

March 1
Page

Mr. Speaker: We, the committee on Natural Resources rep
that SENATE BILL 385 (third reading copy -- blue) be
concurred in as amended .

Signed: _____
Bob Raney, Ch

[REP. DAVE BROWN WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 4, line 4.
Strike: "AND"

2. Page 4, line 9.
Following: "~~and~~"
Insert: "; and"

3. Page 4, line 10.
Following: "~~product~~"
Insert: "any petroleum product"

4. Page 5.
Following: line 25
Insert: "(9) "Petroleum product" includes gasoline, crude o
(except for crude oil at production facilities subject
regulation under Title 82), fuel oil, diesel oil or fue
lubricating oil, oil sludge or refuse, and any other
petroleum-related product or waste or fraction thereof
is liquid at standard conditions of temperature and pre
(60 degrees F and 14.7 pounds per square inch absolute)
Renumber: subsequent subsections

2-15
p.m

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 385 (first reading copy -- white), respectfully report that SB 385 be amended and as so amended do pass:

1. Title, line 18.
Following: "MCA;"
Insert: "AND"

2. Title, lines 19 and 20.
Following: "DATE" on line 19
Strike: remainder of line 19 through "COSTS" on line 20

3. Page 2, line 1.
Following: page 1
Insert: "NEW SECTION. Section 2. Purpose. The purposes of this part are to:

(1) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(2) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

(3) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken."
Renumber: subsequent sections

4. Page 3, line 22.
Following: "resources""
Strike: remainder of line 22
Insert: "means"

5. Page 3, line 24.
Following: "other"
Strike: "resource"
Insert: "such resources"

6. Page 3, line 25.
Following: "state"
Insert: "of Montana"

continued

7. Page 4, line 1.
Following: "or"
Strike: "pertaining"
Insert: "appertaining"

8. Page 5, line 18.
Following: "restoration,"
Insert: "mitigation,"

9. Page 6, line 1.
Following: "department,"
Insert: "the United States, or any federal agency,"

10. Page 7, lines 15 and 16.
Following: "~~include~~" on line 15
Strike: remainder of line 15 through "the" on line 16
Insert: "The"

11. Page 8, line 2.
Following: "penalties,"
Insert: "natural resource"

12. Page 8, line 6.
Strike: "8"
Insert: "9"

13. Page 8, line 22.
Following: "Any"
Insert: "authorized"

14. Page 9, line 18.
Strike: "duly"

15. Page 10, line 12.
Following: "Any"
Insert: "authorized"

continued

16. Page 10, line 15.
Following: "the"
Insert: "authorized"

17. Page 11, line 13.
Following: "an"
Insert: "authorized"

18. Page 11, line 20.
Following: "(6)"
Insert: "where the court determines that there may be an imminent and substantial threat to public health, safety, or welfare or the environment"

19. Page 13, line 12.
Page 15, lines 4, 12, 17, and 20.
Strike: "4"
Insert: "5"

20. Page 13, lines 16 through 18.
Following: "environment." on line 16
Strike: remainder of line 16 through line 18

21. Page 14, line 23.
Following: "release" on line 23
Insert: "that may pose an imminent and substantial threat to public health, safety, or welfare or the environment"

22. Page 15, line 8.
Following: "continues."
Insert: "In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require."

23. Page 15, line 17.
Following: "section;"
Strike: "or"

24. Page 15, line 20.
Following: "section"
Strike: "."
Insert: "; or"

25. Page 15, line 21.
Following: line 20
Insert: "(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court."

26. Page 18, line 24.
Strike: "4"
Insert: "5"

27. Page 26, line 5.
Following: "Nothing"
Strike: "is"
Insert: "in"

28. Page 31, line 3.
Following: "before"
Insert: "final"
Following: "approval"
Insert: "by the director of the department"

29. Page 31, line 4.
Following: "order"
Insert: "on consent issued pursuant to 75-10-711"
Following: "or"
Insert: "before judicial approval of a"

30. Page 32, line 3.
Following: "may"
Insert: "negotiate and"

31. Page 33, line 10.
Following: "transporting,"
Strike: "and"
Insert: "or"

continued

32. Page 34, line 9.
Following: "[Sections 1,"
Strike: "4, 7, 8, and 10 through 16"
Insert: "2, 5, 8, 9, and 11 through 17"

33. Page 34, line 12.
Following: "[Sections 1,"
Strike: "4, 7, 8, and 10 through 16"
Insert: "2, 5, 8, 9, and 11 through 17"

34. Page 34, line 23 through page 35, line 1.
Strike: section 21 in its entirety
Renumber: subsequent section

AND AS AMENDED DO PASS

Signed: Al Bishop
Bruce D. Crippen, Chairman

H.C.
2/16/1
2:40
P.

SCEC385.216